

*United States Court of Appeals
for the Second Circuit*



APPENDIX

76-1138

B
P/S

UNITED STATES COURT
OF APPEALS FOR THE
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Respondent

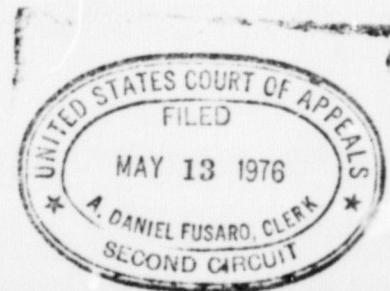
vs.

HERBERT DAVIS GORDON,

Defendant-Appellant.

APPENDIX

SCINTA, RINALDO & SANDLER
Attorneys for Defendant-Appellant
Office and P. O. Address
622 Brisbane Building
Buffalo, New York 14203
THOMAS N. RINALDO, ESQ.
of Counsel.



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Advice of Rights Form	A
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Motion for psychiatric examination of defendant	C

PAGINATION AS IN ORIGINAL COPY

JUDGE/
MAGISTRATE
Assigned Trial
0906
209 1
District Office
Disp./Sentence

GORDON, HERBERT DAVIS

Day Mo.
9 10 75 234
No. of 1
Defendants

defendant

ARGES
18-2113(a) Bank robbery by intimidation (Ct. 1) 1
18-2113(b) Bank Theft (Ct. 2) 1
18-2113(d) Bank robbery with dangerous weapon (Ct. 3) 1

MAGR. CASE NO. 75-294

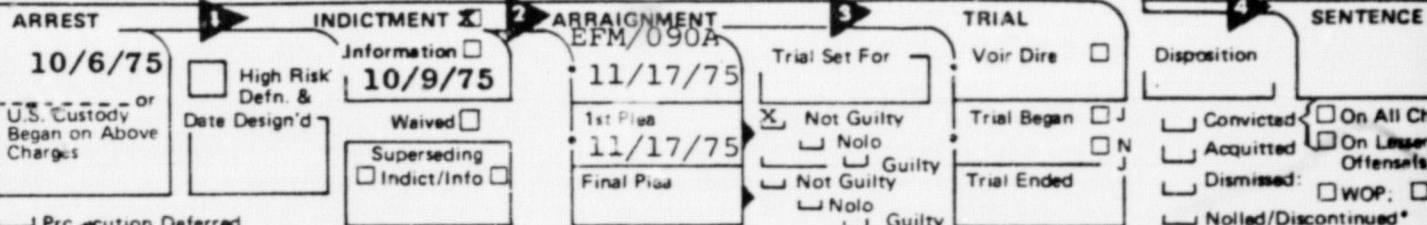
BAIL • RELEASE
 Personal Recd
 Denied
 Unsecured Bo
 AM: Conditional Release
 Set (1000)
 \$ 35 Cont
 date
 Bail Not Made
 Bail Status Changed
(See Docket)
 3rd Part Custody
 PSA

Defense X CJA - Plea Waived Sent None Other P.D.

RNEYS Roger Williams, AUSA

Thomas N. Rinaldo

JALS



RATE

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled _____ Date Held _____	Dismissed
Summons	Issued			Waived <input type="checkbox"/>	Intervening Indictment	Held for District GJ
	Served			Not Waived <input type="checkbox"/>		Held to Answer to U. S. District Court
Arrest Warrant	10/6/75	EFM		Tape No. _____	INITIAL/No.	AT _____
COMPLAINT	10/6/75	EFM				Magistrate's Initials
OFFENSE (In Complaint)	Armed robbery of Homestead Div. of First Federal Savings & Loan Assn. 18 USC Sect. 2113(a)(d)					

* Show last names and suffix numbers of other defendants on same indictment/information

V. Excludable Delay

(a) (b) (c)

DATE	PROCEEDINGS	
10/16/75	Filed Magistrate's complaint, affidavit from the W.D.N.Y.; Magistrate's temporary commitment, waiver of removal hearing, bail reform act form no. 2, from the Magistrate for the Northern Dist. of Texas	
10/24/75	Filed Deft's consent to transfer action for plea and sentence to the U.S. Dist. Court for the Northern District of Texas Pursuant to Rule-20	
10/30/75	Orig. Indictment, certified cy. of defendant's consent to transfer for plea and sentence, papers received from the Magistrate for the Northern Dist. of Texas, copy of docket sheet, and form B mailed to the Clerk, U.S. Dist. Ct., for the Northern Dist. of Texas, at Dallas, pur. to Rule-20	
11/13/75	Certified cy. of Order of transfer, Orig. Indictment, and other papers returned from the Northern Dist. of Texas, upon deft's refusal to proceed pur. to Rule-20	
11/7/75	Filed Magistrate's docket	
11/17/75	At arraignment, discovery schedule set: discovery motions to be filed by Nov. 24th; Government's response to be filed by Dec. 1st; Argument scheduled Dec. 2, 1975. Bail continued at \$35,000. Remanded to custody of Marshal	

EXCLUDABLE DELAY SECTION IN SECTION V. ANY OCCURRENCE OF EXCLUDABLE

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
11/18/75	Filed cy. 5, CJA 20, Ord. appointing Thomas Rinaldo counsel. (Maxwell, Magistrate)				
11/19/75	Filed Orig. Warr.-executed				
11/20/75	Filed Deft's. Mot. for B/P's, Rule 16 Discovery, Insp. of G.J. Minutes, Order for transcript of arraignment, Order allowing defendant to incur expenses of Investigator and Court Steno, Wade Hearing, and Order directing examination by two psychiatrists.				
11/26/75	Filed Govt's response to certain pre-trial motions filed by the deft. herein				
11/25/75	Proceedings before the Magistrate - Motions have been filed; Govt. to respond by 12/1/75 & argument on 12/2/75 as scheduled				
12/2/75	Proceedings before the Magistrate - Request for transcript of arraignment withdrawn by defense. Argument on motions - denied in part, resolved or granted.				
12/15/75	Filed Deft's notice of motion & affidavits for psychiatrist to examine the deft. if he is presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him, or properly assist in his own defense, and whether the deft. was mental competent at the time of the commission of the crimes charged in the indictment, pur. to T.18, U.S.C., Sect. 4244-Ret. 12/15/75				
12/15/75	Filed Order that the deft. be examined by Michael J. Lynch pur. to T.18, U.S.C., Sect. 4244, etc. ELFVIN, J.				
12/15/75	Court granted motion by deft. to examine deft. as to competency to stand trial and as to competency at time of offense				
1976 Jan 26	The court set hearing on 1/29/76 to suppress identification and statement, and trial to commence on 1/30/76				
1/29/76	Hearing on Deft's motions to suppress identification, evidence and oral admissions; Court reserves decision to admit two guns as evidence and oral admissions				
1/30/76	Filed Ct. Steno's transcript of suppression hearing taken on 1/29/76				
1/30/76	Filed Cy. 5 cf CJA-21 - authorization for transcript (daily cy.)				
1/30/76	Filed Cy. 2 - of CJA-21 voucher for transcript in the amt. of \$237.50; Orig. to the Adm. office for payment.				
1/30/76	Filed Six subpoenas - Lawrence A. Murphy, Irene Wolfe, Gary L. McGuire, Frances Bialek, Eileen Ivadelli Batt, Thomas K. Schlicht, served 1/27/76				
1/30/76	Govt. moves case to trial before Judge Elfvin and jury, at Buffalo, N.Y.; trial adj. 2/3/76				

(a) Interval (per Section II) (b) Start Date (c) End Date
 Ltr. Code

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
2/3/76	Trial continues same appearances and jury; Court denies deft's motions to dismiss; Jury leaves to begin deliberation; Jury enters and reports a verdict of guilty on all three counts; Jury is discharged; Ct. directed motions against the verdict on 2/6/76				
2/4/76	Filed one subpoena for Thomas Nogard served on 2-2-76 Filed one subpoena for Deborah Daniels served on 1-29-76				
2/5/76	Filed two subpoenas for Peter Grabolle and Thomas Nogaro, returned no service.				
2/5/76	The Court denies motion by deft. to set aside the verdict of the jury. Sentencing set for 3/15/76				
2/11/76	Filed subpoena - Earl L. Sanders, served 1/29/76				
3/15/76	Filed Cy 2 and 5 of CJA-21 - Authorization and voucher for transcript in the amt. of \$160.50; Orig. to the Adm. office for payment.				
3/15/76	The Court sentenced deft. to the custody of the Attorney General for a period of Eighteen (18) Years--ELFVIN, J.				
3/16/76	Filed Ct. Stenographer's transcript of trial 1/29/76 & 1/30/76 (Two Volumes)				
3/18/76	Filed Ct. Steno's. transcript of proceedings before Judge Elfvin on 3-15-76.				
3/19/76	Filed J & C, Elfvin J.				
3/23/76	Filed deft's notice of appeal.				
3/24/76	Cy. of Deft. Gordon's notice of appeal, mailed to the U.S. Atty., and the CCA with form A, CJA-23, statement of docket entries. Cy. of notice of appeal given to deft., by defense counsel.				
3/31/76	Filed copy 2 and 5 CJA 21 authorization and voucher for expert services. Elfvin, J.				

CLOSED

In the District Court of the United States

For the Western District of New York

THE UNITED STATES OF AMERICA

vs.
HERBERT DAVIS GORDON

MARCH 1975 SESSION TERM
(Impaneled May 27, 1975)

No.

CR75-234

Via. T. 18, U.S.C.,
§ 2113(a), (b)
and (d)

COUNT I

The Grand Jury Charges:

On or about the 3rd day of October, 1975, in the Western District of New York, the defendant, HERBERT DAVIS GORDON, did, willfully, knowingly and unlawfully, and by force, violence and intimidation, take from the person and presence of Eileen Batt and others approximately \$685.00 in money, belonging to and in the care, custody, control, management and possession of the First Federal Savings and Loan Association of Rochester, New York, Homestead Division, 360 Pearl Street, Buffalo, New York, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(a). ✓

COUNT II

The Grand Jury further charges:

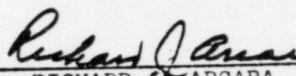
On or about the 3rd day of October, 1975, in the Western District of New York, the defendant, HERBERT DAVIS GORDON, did, willfully, knowingly and unlawfully take and carry away, with intent to steal and purloin, from the

First Federal Savings and Loan Association of Rochester, New York, Homestead Division, 360 Pearl Street, Buffalo, New York; the sum of \$685.00 in money, belonging to and in the care, custody, control, management and possession of said bank, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation; all in violation of Title 18, United States Code, Section 2113(b).

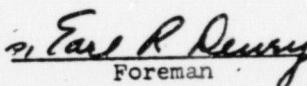
COUNT III

The Grand Jury further charges:

On or about the 3rd day of October, 1975, in the Western District of New York, the defendant, HERBERT DAVIS GORDON, by force, violence and intimidation, did take from the person and presence of Eileen Batt approximately \$685.00 in money belonging to and in the care, custody, control, management and possession of the First Federal Savings and Loan Association of Rochester, New York, Homestead Division, 360 Pearl Street, Buffalo, New York, the deposits of which were then insured by the Federal Savings and Loan Insurance Corporation, and HERBERT DAVIS GORDON, in committing the aforesaid offense, did assault Eileen Batt and put in jeopardy the life of Eileen Batt with the use of a weapon, to wit, a handgun; all in violation of Title 18, United States Code, Section 2113(d).


RICHARD J. ARCARA
United States Attorney

A TRUE BILL:


Earl R. Deury
Foreman

No. 1275-254

UNITED STATES DISTRICT COURT

WESTERN District of NEW YORK

District of New York

THE UNITED STATES OF AMERICA

vs.

HERBERT DAVIS GORDON

INDICTMENT

A true bill.
By Earl R. Harvey
Deputy

Filed in Court this 9th day
of October, A.D. 1975

Check.

Bail, \$ _____

GPO 802-401

United States of America vs.

DEFENDANT

HERBERT DAVIS GORDON

United States District Court for
WESTERN DISTRICT OF NEW YORK

DOCKET NO. Cr-1975-234

AD 245 (B-7A)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
March 15, 1976

COUNSEL

WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Thomas Rinaldo

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

There being ~~NOT GUILTY~~ verdict of

NOT GUILTY. Defendant is discharged
 GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **Bank robbery by intimidation (Ct. 1)
in vio. T. 18 2113(a)** **Bank theft (Ct. 2) in vio. T. 18 2113(b)**
Bank robbery with dangerous weapon. (Ct. 3) in vio. T. 18 2113(d)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that ~~Defendant is sentenced to the custody of the Attorney General for a period of eighteen (18) years.~~

Defendant is sentenced as follows: The Court sentenced defendant to the custody of the Attorney General for a period of eighteen (18) years.

5
22
19
U.S. Prob.
Held

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
 U.S. District Judge
 U.S. Magistrate

John T. Elfvin, U. S. District Judge
Date March 15, 1976

#6

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
3

4 UNITED STATES OF AMERICA,
5 Plaintiff,

6 -vs-

Cr. 75-234

7 HERBERT DAVIS GORDON,
8 Defendant.
9

10 Testimony of EILEEN BATT, FRANCES BIALEK and
11 H. LAMAR MEYER in proceedings held in the above entitled
12 action before the HON. JOHN T. ELFVIN, United States
13 District Judge, in and for the Western District of New
14 York, at Buffalo, New York, on January 29, 1976.

15 APPEARANCES: RICHARD J. ARCARA, ESQ.,
16 United States Attorney, by
17 ROGER WILLIAMS, ESQ.,
18 Ass't. United States Attorney,
19 Appearing on behalf of the Government.
20
21
22 THOMAS RINALDO, ESQ.,
23 Appearing on behalf of the Defendant.

24 * * * * *

25 iv

- 1 Q. Did you notice if he had shoes on?
- 2 A. I didn't look at his feet. He must have had shoes
3 on.
- 4 Q. Did he have eyeglasses on?
- 5 A. Yes.
- 6 Q. Do you recall what they looked like?
- 7 A. They were plastic frames.
- 8 Q. Did he have a hat on?
- 9 A. No.
- 10 Q. Do you recall what he had in his hands, Miss Bialek?
- 11 A. He had the gun and a bag.
- 12 MR. RINALDO: I have nothing further, your Honor.
- 13 MR. WILLIAMS: I have nothing further.
- 14 THE COURT: All right, thank you.
- 15 (Witness excused.)
- 16

17 H. L A M A R M E Y E R , 4207 Valley Ridge Road,
18 Dallas, Texas, called as a witness on behalf of the
19 Government, and being first duly sworn, testified as
20 follows:

21 DIRECT EXAMINATION BY MR. WILLIAMS:

- 22 Q. Mr. Meyer, you are a special agent of the FBI, correct?
- 23 A. Yes, I am.
- 24 Q. How long have you been a special agent?
- 25 A. Fourteen years in February.

- 1 Q. What is your post of duty?
- 2 A. Dallas, Texas.
- 3 Q. How long have you been in Dallas?
- 4 A. About five and a half years now.
- 5 Q. All right, sir. Directing your attention to October 6,
- 6 1975, did you have occasion on that day to go to the
- 7 YMCA in Dallas, Texas?
- 8 A. Yes, I did.
- 9 Q. And where is that located?
- 10 A. The downtown branch of the YMCA is located on the
- 11 600 block of North Ervay Street.
- 12 Q. Now, prior to the time that you went to the Y on
- 13 North Ervay Street on October 6th, did you have some
- 14 information from your Buffalo, New York office?
- 15 A. Yes. Our alternate supervisor had received a phone
- 16 call from our FBI office here in Buffalo, New York,
- 17 and from the telephone call had made a handwritten
- 18 record of some details involving a bank robbery that
- 19 had occurred on the 3rd day of October here in
- 20 Buffalo. The various details he received included
- 21 the name of the man that they thought had done it.
- 22 They said Herbert Davis Gordon they thought was the
- 23 subject. They had developed information through
- 24 their investigation here to indicate that Mr. Gordon
- 25 may have traveled from Buffalo to Dallas, Texas after

1 the robbery, and they thought he might be lodged there
2 at the YMCA in downtown Dallas.

3 Q. At the time you went out did you have any other
4 information?

5 A. Yes. We had information that the man might be armed
6 because he had allegedly committed an armed robbery.
7 We had information to indicate he may have mailed
8 or had sent some personal property through the Railway
9 Express Company directly to the downtown office of the
10 YMCA, and to us this indicated that probably he was
11 there or at least enroute to the YMCA.

12 Q. All right, sir. About what time did you arrive at
13 the Y?

14 A. Shortly after three o'clock, I would guess like
15 3:02 or 3:10 P.M..

16 Q. All right. Now, at the time you went there did you
17 know whether or not a warrant had been issued for
18 the arrest of the bank robber?

19 A. Yes, I should have included that in the information
20 we received by phone from Buffalo. We had the
21 information that a warrant had been issued that morning
22 on the 6th, October 6, 1975, at Buffalo for the
23 arrest of Mr. Gordon.

24 Q. And did you also have any photograph or facsimile
25 of a photograph?

- 1 A. Yes, they forwarded to us a facsimile by telephone
2 of a photograph taken by a bank surveillance camera
3 of the robber during the robbery of the bank.
- 4 Q. All right. Let me show you what has been marked
5 as Government's Exhibit 15 for identification. Is
6 that the facsimile to which you have just testified?
- 7 A. Yes, it is.
- 8 Q. All right. When you went to the Y did you have that
9 in your possession?
- 10 A. Yes, we did.
- 11 Q. About what time did you arrive there?
- 12 A. Shortly after three o'clock. Three-ten probably
13 is a good time. I think very close to that.
- 14 Q. P.M.?
- 15 A. Yes, sir, P.M., in the afternoon.
- 16 Q. All right. And were you accompanied by any other
17 agents?
- 18 A. Yes, I had two other agents I was able to get to
19 come with me from our squad. One was Dodson Haynes,
20 the other was Philip Lowell. They accompanied me to
21 the YMCA.
- 22 Q. Tell us what, if anything, you did upon arrival
23 at the YMCA?
- 24 A. Once we arrived I went directly to the resident
25 manager, Mr. Wilson, to check to records to see

1 if they had a man by the name of Gordon as a resident
2 at the YMCA. We left Mr. Lowell out in the hallway
3 where people had to come and go from the elevators
4 in the building, and Mr. Haynes and I checked the
5 records with Mr. Wilson.

6 Q. All right. In checking the records did you discover
7 whether or not anyone by the name of Gordon was
8 registered at the Y?

9 A. Yes, Mr. Wilson did have a Herbert D. Gordon register-
10 ed at the YMCA in Room 721.

11 Q. All right, sir. Did there come a time when you went
12 to Room 721?

13 A. Yes, after we confirmed that he was registered there,
14 that he had paid his rent, and so forth, we went
15 out into the lobby and talked to Mr. Lowell, who said
16 he saw a man that resembled Gordon go up in the
17 elevator. We felt sure he was in the room. We
18 went up to 721, and that is where we knocked on the
19 door and arrested him.

20 Q. When you say "we went up," who is we?

21 A. Haynes and I. Since we were not sure that it was
22 Gordon that went upstairs, we left Lowell downstairs,
23 and Haynes and I proceeded up to the 7th floor.

24 Q. Before you went to the 7th floor, did Mr. Lowell
25 give you any information about his observation of

1 the individual getting into the elevator and what
2 floor it stopped at?

3 A. He observed an individual -- he had a copy of this
4 facsimile we talked about earlier -- and he said
5 an individual resembling the man in the facsimile
6 had gone upstairs. He described him as a black male
7 of approximately forty-six -- .

8 MR. RINALDO: I object to this line of questioning
9 as to what Mr. Lowell said, or what have you.
10 I think Mr. Williams --

11 MR. WILLIAMS: It is not being offered for the
12 truth of the statement, simply as an
13 explanation as to how and why Mr. Haynes
14 and this witness went upstairs to Room 721.

15 THE COURT: Just leave it out.

16 MR. WILLIAMS: All right.

17 BY MR. WILLIAMS:

18 Q. Now, when you got up to Room 721, Mr. Meyer, what,
19 if anything, did you do?

20 A. Once at the room I knocked on the door.

21 Q. All right. What happened?

22 A. The door was opened by a man I recognized as the
23 man in that facsimile that I had received from
24 Buffalo and --

25 Q. Will you describe that man that you saw?

1 A. Yes. He was a black male, approximately forty-five,
2 forty-six years of age, wearing glasses, had short
3 cut black curly hair, he was of slight build, he was
4 about five feet six inches tall, and I just immed-
5 iately recognized him as the man in the facsimile.

6 Q. All right, sir. From the time that you first saw
7 him, how much time were you with him that day? How
8 long were you in his presence that day?

9 A. About an hour, maybe an hour and fifteen minutes at
10 the most.

11 Q. Do you see that individual in the courtroom today?

12 A. Yes, I do.

13 Q. Would you point him out for us?

14 A. He is seated over there without a hat, wearing glasses,
15 next to defense counsel.

16 Q. All right. Now, when this individual opened the
17 door what happened then, what did you do, what did
18 you say?

19 A. I pushed my way into the room, and told Mr. Gordon
20 that I was an agent with the FBI, as was Mr. Haynes,
21 and that he was being placed under arrest for bank
22 robbery based on a warrant issued in Buffalo, New
23 York.

24 Q. All right, sir. Now, will you describe that room for
25 me, please?

- 1 A. Yes. It is a small room of like seven feet in
2 depth -- wait -- seven feet wide by ten and a half
3 feet in depth, and practically full of furniture;
4 a bed, a small desk, a bureau of drawers, two chairs,
5 a TV up on the wall, mounted on the wall, plus a
6 closet. There was a closet up toward the front of
7 the room, a small closet.
- 8 Q. Now, after you told him that you were placing him
9 under arrest for bank robbery what, if anything, did
10 you do next or say, and what, if anything, did he do
11 or say?
- 12 A. By that time he was handcuffed. We had searched
13 and handcuffed Mr. Gordon. I then sat down on the
14 bed with him --
- 15 Q. You say you searched him?
- 16 A. Yes. By "search" I didn't mean turning his pockets
17 out. I mean like a brief frisk for weapons, knowing
18 that he possibly was a man wanted for armed robbery.
19 That is one of the first things we do is check for
20 weapons.
- 21 Q. That is what you did in this case?
- 22 A. Yes. Then once he was handcuffed, I sat with him
23 on the bed and explained his rights to him. I
24 pulled out --
- 25 Q. When you say "explained his rights to him," what

1 did you do, what did you say?

2 A. I pulled out a printed copy of his rights and read
3 them to him, and then I showed him the printed form
4 of his rights so that he could read them, and he
5 glanced at the page and I assumed he read them.
6 I asked him if he would elect to sign the waiver
7 of his rights at the bottom of the page. At that
8 time he said no, that he don't think he should sign
9 anything at that point.

10 Q. All right, sir. Let me show you what is marked
11 Government's Exhibit 12 for identification. Do you
12 recognize that?

13 A. Yes, that is my handwriting, that is the copy of
14 his rights that I read to Mr. Gordon.

15 Q. All right. Is that a standard form that your office
16 uses?

17 A. Yes, it is.

18 Q. And you read that to him?

19 A. Yes, I did.

20 Q. All right. Now, after you finished reading that to
21 him what, if anything, did you do?

22 A. I asked him to sign it, if he would elect to sign
23 it, with the explanation it was his choice, he
24 could elect to sign it and waive these rights or
25 he could elect not to sign it and still talk to

1 us, realizing he could stop at any time, refuse to
2 answer any questions, refuse to continue the inter-
3 view at any time if he so elected. He elected not
4 to sign.

5 Q. All right, sir. You indicated that you also exhibited
6 that form to him?

7 A. Yes, I did, after I read it to him.

8 Q. All right. What happened then?

9 A. Before we sat down on the bed actually, I was concern-
10 ed about the weapons, before we sat on the bed, I
11 found one weapon on the bed which was a .38 caliber
12 Special, snub nose type revolver.

13 Q. Well, at what point did you find this revolver on
14 the bed?

15 A. I did that -- I found -- I should have mentioned that
16 earlier. I found the revolver before we sat on the
17 bed, before I gave him his rights.

18 Q. How did you happen to find the revolver?

19 A. Well, I asked him, "Do you have any weapons in the
20 room?" He indicated the one on his bed. He also,
21 as I recall, had a jacket on the bed. He indicated
22 there was a pistol there, and I got that.

23 Q. When you say he indicated, did he say something to
24 you, was he motioning or pointing? What do you
25 mean by "indicated"?

1 A. He kind of motioned with his head, as I recall, that
2 there is one on the bed. He turned his head to the
3 side, like that, and looked toward the bed. I immed-
4 iately went to the bed and found it.

5 Q. After you got into the room and you were with Mr.
6 Gordon, how far away were you from the bed where
7 you discovered this weapon?

8 A. Oh, less than a step, less than a step. It's a
9 crowded room.

10 Q. All right, sir. Let me show you what is marked as
11 Government's Exhibit 7 for identification, and ask
12 you, sir, if you recognize that?

13 A. Yes, that is weapon I found on his bed. It's got
14 my initials written on the card.

15 Q. And a date?

16 A. Yes, sir.

17 Q. When you discovered that can you tell us whether or
18 not it was in this holster?

19 A. Yes, it was in that holster. I have initialed the
20 holster and dated it also.

21 Q. All right, sir. Did you take that into your possess-
22 ion?

23 A. Yes.

24 Q. What, if anything, did you do or say next?

25 A. I asked him if there were any more weapons in the

1 room. He said yes, and further said there was a
2 weapon in the white bag in closet. I immediately
3 went to the closet and pul ed out a white vinyl bag
4 with a zipper, and there was a weapon in that. It
5 was an automatic pistol, this time of a different
6 caliber, but it was in a holster also in the bag.

7 Q. Now, at what point did this come about, when you went
8 into the closet?

9 A. Before we sat down and I read him his rights. I asked
10 him immediately -- once we placed him under arrest
11 and identified ourselves, I asked about the weapons.
12 I told him first why he had been arrested, who we
13 were, and I asked him if there were any weapons in
14 the room. That was the first thing I recall asking
15 him. Once I recovered the gun on the bed and the
16 gun in the closet, we sat down and explained his
17 rights to him.

18 Q. All right. Now, let me show you what has been marked
19 Government's Exhibit 13 for identification. Do you
20 recognize that?

21 A. Yes, this is the white vinyl bag I found in the
22 closet. It has my initials and the date on it.

23 Q. All right. This is the bag that you just referred
24 to in your testimony?

25 A. Yes.

- 1 Q. Now, you say that bag contained something?
- 2 A. Yes, sir, it contained a 9 millimeter automatic
- 3 pistol, as well as some money. There was loose
- 4 change, as well as some bills in the bag, and a few
- 5 personal possessions, underwear, things like this.
- 6 Q. All right, sir. What, if anything, do you recall
- 7 about the bills that were in that bag?
- 8 A. We compared the bills with the bait list of twenty
- 9 dollar bills we had received by phone from our
- 10 Buffalo office. Two of the twenty dollar bills I
- 11 found in that bag had serial numbers that matched
- 12 the bait bill serial numbers we had received from
- 13 Buffalo.
- 14 Q. At what point did you do that?
- 15 A. This was after we had warned him and read him his
- 16 rights.
- 17 Q. You testified you obtained the bag before you
- 18 advised him of his rights, correct?
- 19 A. Yes, but I removed only the weapon from the bag.
- 20 After I did that then I asked him if he would allow
- 21 us to search the room. Then I executed a permission
- 22 to search form with Mr. Gordon.
- 23 (Thereupon Government's Exhibit 27 was
- 24 marked for identification.)
- 25

- 1 Q. Let me show you Exhibit 27, do you recognize that?
- 2 A. Yes, sir, this is the -- I see my initials on the
- 3 holster -- this is the 9 millimeter automatic that
- 4 I recovered in the white vinyl bag.
- 5 Q. All right. After you -- strike that. Did you remove
- 6 this from the white vinyl bag?
- 7 A. Yes.
- 8 Q. That is Exhibit 27. What happened then?
- 9 A. Then we asked Mr. Gordon if he would object to our
- 10 searching the room. I read to him and displayed to
- 11 him a permission to search form. He said he would
- 12 have no objection, and signed the form. We continued
- 13 to search in detail now.
- 14 Q. Did that occur before or after you testified that
- 15 you advised him about his rights?
- 16 A. That was after the rights.
- 17 Q. My question is now precisely at what point did you
- 18 advise him of his rights?
- 19 A. Right after the arrest and the recovery of the weapon
- 20 on the bed and the recovery of the weapon in the
- 21 bag. Once I had the two firearms, he said there
- 22 were no others, then I warned him of his rights,
- 23 read the rights to him.
- 24 Q. All right.
- 25 A. Right after that the permission to search form.

- 1 Q. That was immediately after you read him his rights?
- 2 A. Yes.
- 3 Q. Now, what did you say to him with regard to this
- 4 search?
- 5 A. I told him we would like to search the room in
- 6 detail. In other words, not just the things on the
- 7 top of the bed or within his reach, and that to do that
- 8 I would like for him to read this form. I read it
- 9 to him since he was handcuffed. Then I displayed
- 10 it to him. He agreed to sign it, giving us permission
- 11 to search the room in detail.
- 12 Q. You say you read a form to him?
- 13 A. Yes, sir, I did.
- 14 Q. Let me show you what is marked Government's Exhibit
- 15 14 for identification, do you recognize that?
- 16 A. Yes, sir, this is the permission to search, signed
- 17 by Mr. Gordon and myself.
- 18 Q. All right. Now, you testified that you read that to
- 19 him?
- 20 A. Yes, I did.
- 21 Q. All right. After you read that to him what, if any-
- 22 thing, did you say and what, if anything, did he say?
- 23 A. I told him it was our procedure in a case similar
- 24 to that where we had arrested a suspect for bank
- 25 robbery, we like to search in detail, and after I

1 read the form to him he said he had no objection,
2 that he had told me where all the guns were, the
3 two weapons he had pointed out. He said they had
4 been legally purchased, that he had committed no
5 crimes with them, he had no objection to our search-
6 ing the room, and he signed the form.

7 Q. You testified you read that form to him?

8 A. Yes.

9 Q. All right. Did you ever show that to him?

10 A. Yes, I did, right after I read it.

11 Q. Do you know whether or not he read it?

12 A. He appeared to. He glanced at it before he signed
13 it. I can only say I thought he did read it. At
14 least he observed the form.

15 Q. Now, at that point about how long had you been in
16 the room?

17 A. Maybe ten, fifteen minutes.

18 Q. All right. After he signed that consent form,
19 Government's Exhibit 14, what, if anything, did you
20 do then?

21 A. We searched the room. Primarily I did, the other
22 man, Mr. Haynes, with me watched the prisoner, and
23 I proceeded to search the room in detail, that is,
24 all the drawers in the bureau of drawers, through
25 the closet, the pockets of his clothes, his person.

1 I checked his person and found some change, as well
2 as some small bills in his wallet, and some larger
3 bills in the white vinyl bag, as well as some change.

4 Q. All right. Did you find anything else?

5 A. I found some ammunition in the white bag that would
6 fit both pistols.

7 Q. All right, sir. I show you what is marked Govern-
8 ment's Exhibit 10, do you recognize that?

9 A. This is the .38 caliber ammunition that fits the
10 snub nose that I found on the bed. It's got the
11 date and my initials on it.

12 Q. Where did you find Government's Exhibit 10?

13 A. Five of these .38 caliber bullets were in the
14 pistol I found on the bed, the others were found
15 in the white vinyl bag, wrapped up in a white piece
16 of paper.

17 Q. All right, sir. Now, you indicated you also found
18 some money in that white vinyl bag?

19 A. Yes, I did. There was som change -- very little --
20 but there was some change in the bottom of the bag,
21 it had gotten under the paste board bottom, and some
22 larger paper bills, some ten's and twenties in the
23 bag.

24 Q. All right, sir. Let me show you Government's Exhibit
25 3 for identification, and ask if you can recognize

1 that?

2 A. Yes, this is one of the twenty dollar bills I found
3 in the white vinyl bag, whose serial number matched
4 the serial number of one of the bait bills, the
5 number of which we had received from Buffalo. It
6 has my initials and the date on it, on the bill
7 itself.

8 Q. All right, sir. I show you Government's Exhibit 4
9 for identification, and ask you if you recognize
10 that?

11 A. This is the other or the second twenty dollar bill
12 I found in the white vinyl bag, whose serial number
13 again matched one of the bait bills serial numbers
14 we had received from Buffalo. My initials and the
15 date are on it.

16 Q. All right, sir. Now, I think you testified you found
17 some other money?

18 A. As I recall, we found some change in his pocket,
19 as well as in the white vinyl bag. We found some
20 small bills in his pocket, his wallet, and some five
21 dollar and ten dollar bills in the white vinyl bag.
22 As I recall, there was \$336.65 recovered, excluding
23 these two twenty dollar bills.

24 Q. All right, sir. And did you make some note regarding
25 the recovery of these bills?

- 1 A. Yes. As I recall it, I did it by the number of the
2 denominations, and if I am not mistaken, there were
3 seven twenty dollar bills recovered, and there were
4 eleven ten dollar bills. I don't remember how many
5 five's, and four one's. I don't remember how many
6 five's, it's listed in my recording of that evidence.
- 7 Q. I am going to show you what is marked as Court Exhibit
8 23, and ask if you recognize that?
- 9 A. Yes, this is the dictation as recorded by a steno-
10 grapher in our office, as I dictated eleven items
11 of evidence. Number 8 here is the recording of the
12 cash I recovered in that room, the \$336.65, and it
13 breaks it down as far as how many twenties, how many
14 ten's, how many five's, one's, and so forth, as well
15 as change.
- 16 Q. All right, sir. And will you tell us how many
17 twenties, ten's, five's and one's you recorded as
18 having been recovered?
- 19 A. It says \$336.65 in cash; seven twenty dollar bills,
20 eleven ten dollar bills, eight five dollar bills,
21 four one dollar bills, and the two twenty dollar
22 bills that were what we call bait bills that were
23 recovered in the bag also.
- 24 Q. Let me show you what is marked Government's Exhibit
25 5 for identification, sir. Did you yesterday at my

1 request compare the bills by denominations and number
2 contained in that exhibit with the list that you
3 prepared of the bills that you had recovered either
4 from Mr. Gordon or from the room?

5 A. I did.

6 Q. Are all the bills that you initially recorded on
7 October 6th contained in Exhibit 6?

8 A. Yes.

9 Q. Strike that, Number 5.

10 Q. Number 5, that is correct. The number of bills
11 match the list.

12 Q. All right. I now show you Government's Exhibit 6,
13 do you recognize that?

14 A. Yes, this is the \$2.65 in change recovered after
15 my search, either found in the white vinyl bag or
16 on the person of Mr. Gordon. I recognize that \$2.65
17 as my writing.

18 Q. All right, sir. That change was found where?

19 A. Part of it was found in the bottom of the white
20 vinyl bag where it had gotten under the paste board
21 bottom, and part of it in the pocket of Mr. Gordon.

22 Q. All right, sir. Does that appear on the inventory
23 list that you had prepared?

24 A. The silver change, no, does not appear on the list.

25 Q. All right. You say you recognize some of the

- 1 writing contained on that?
- 2 A. Yes, the \$2.65 figure is my writing.
- 3 Q. All right. Is there any question in your mind as
4 to where you recovered that?
- 5 A. No.
- 6 Q. Were there any other items you seized as a result
7 of your search?
- 8 A. Yes. In his personal belongings we recovered two
9 Amtrack tickets.
- 10 Q. When you say that you recovered those in his personal
11 belongings, where did you find them?
- 12 A. As I recall, they were in the white vinyl bag.
- 13 Q. All right. Let me show you Government's Exhibit 9
14 for identification, do you recognize those?
- 15 A. They -- yes, they are the two Amtrack tickets
16 recovered in the white vinyl bag, and we have the
17 date an my initials on the front.
- 18 Q. All right, sir. Did you seize anything else as a
19 result of your search?
- 20 A. Yes. There were two race track tickets, as I
21 recall, the printing was in Spanish on the tickets.
22 I don't recall the details on those, but they were
23 entered.
- 24 Q. Anything else?
- 25 A. Oh, I recovered a note on a white slip of paper,

1 written in blue ink, that had "holdup" written at
2 the top.

3 Q. Where did you find that?

4 A. That, too, was in the white vinyl bag.

5 Q. Okay. I now show you what has been marked as
6 Government's Exhibit 8 for identification, and ask
7 if you recognize that?

8 A. This is the note written in blue ink on the white
9 paper that has "holdup" at the top. It has my
10 initials and the date on the back.

11 Q. That was found where, sir?

12 A. In the white vinyl bag found in the closet.

13 Q. All right. Now, did there come a time when you left
14 Room 721 of the YMCA?

15 A. Yes. We were concerned, it was getting close to
16 four o'clock or right at four, and we were concerned
17 with our obligation to get Mr. Gordon before a
18 magistrate, and so we left right after four o'clock,
19 bundled all the things up we had collected, and
20 with Mr. Gordon left in a government automobile for
21 the county jail.

22 Q. About what time did you leave?

23 A. Right after four, 4:05 P.M.

24 Q. About what time did you arrive at Room 721?

25 A. About three-thirty.

1 Q. All right, sir.

2 Q. Three-thirty. We spent a little time downstairs.

3 Q. Three-thirty p.m.

4 Q. All right. Between about three-thirty p.m. and
5 four or so, you were in the room with Mr. Gordon?

6 A. Yes.

7 Q. All right. During that period of time, other than
8 what you have already testified to, was there any
9 conversation between you and Mr. Gordon or your
10 fellow agent, Mr. Haynes, and Mr. Gordon that you
11 overheard?

12 A. Primarily between Mr. Gordon and myself. I tried to
13 go further with the interview, and asked Mr. Gordon
14 obvious questions like where he had come from, what
15 was he doing in Dallas, and finally got around to
16 asking him -- I had explained to him that he was
17 under arrest for a bank robbery, as a suspect of
18 a bank robbery in Buffalo, New York -- and I asked
19 him some pretty point blank questions, "Mr. Gordon,
20 did you in fact rob the bank?" He just refused to
21 answer the question, and others like it that would
22 connect him with the robbery.

23 Q. All right, sir. Then you indicated that you left at
24 four o'clock?

25 A. Yes, sir.

- 1 Q. Where did you go from there?
- 2 A. We went to the county jail, Dallas County Jail.
- 3 Q. All right. How long did it take you to get from
- 4 the Y to the Dallas County Jail?
- 5 A. No more than five, ten minutes. At the most, ten
- 6 minutes.
- 7 Q. All right. Was that by an FBI vehicle?
- 8 A. Yes.
- 9 Q. Other than the defendant, who was in the car with
- 10 you?
- 11 A. Mr. Haynes was driving, Mr. Lowell was in the front
- 12 passenger's seat, I was in the rear behind the driver,
- 13 and Mr. Gordon was in the passenger's side of the
- 14 rear seat.
- 15 Q. All right, sir. Now, in that five minute interval
- 16 on the way from the Y to the Dallas County Jail, did
- 17 you say anything to Mr. Gordon, did Mr. Gordon say
- 18 anything to you?
- 19 A. Yes. Once we were settled in the car and on our way,
- 20 I showed him that facsimile of a photograph taken
- 21 by a bank surveillance camera --
- 22 Q. Now, you are referring to what is marked Government's
- 23 Exhibit 15?
- 24 A. Yes, I am. I showed that to him in the car.
- 25 Q. You say -- all right, okay, go ahead.

1 A. And he immediately responded, "Even my mother would
2 recognize that picture of me."

3 Q. All right. When you showed Mr. Gordon that photo-
4 graph, Government's Exhibit 15, did you say anything
5 to him prior to the time that you got that response
6 from him?

7 A. No, not that I recall.

8 Q. All right. Was anything else said in that five
9 minute interval?

10 A. Yes. I considered that an admission when he said,
11 "Even my mother would recognize that picture of me."
12 I pointed to the white bag in the person's hand in
13 the picture and to the white bag I recovered in his
14 room, and said, "Is this the same white bag you took
15 into the bank?" He said, "Yes."

16 Q. All right. Did he say anything else at that time?

17 A. Yes, he made a couple more statements. The one
18 thing he said was that he had decided to come to
19 Dallas to make a new start, and as a result had left
20 Buffalo and traveled by Amtrack to Dallas, Texas, and
21 obtained this room at the YMCA, and that he planned
22 to look for a job and settle down in Dallas.

23 Q. Any other conversation that you can recall between
24 you and Mr. Gordon in the vehicle being driven by
25 Mr. Haynes from the Y to the Dallas County Jail?

1 A. Yes. I told him we would try to obtain an appearance
2 for him before a magistrate that afternoon, but that
3 chances are it would be the following morning since
4 it was after four o'clock, and I explained the purpose
5 of this first appearance before a magistrate to him,
6 and I told him that it would be further explained to
7 him when he did appear before the magistrate, that
8 he would have to spend the night in the Dallas County
9 Jail.

10 MR. WILLIAMS: All right, sir. I have no more ques-
11 tions.

12

13 CROSS EXAMINATION BY MR. RINALDO:

14 Q. Mr. Meyer, I believe you testified that on October
15 6th you had some information regarding a bank robbery
16 which occurred in Buffalo, New York, is that correct?

17 A. That is correct.

18 Q. And how did you receive that information?

19 A. I received it from my alternate supervisor, who told
20 me he got it by telephone from Buffalo.

21 Q. Do you recall what time you received that information?

22 A. Yes, it was, I would say -- let's see, I had to get
23 two guys to go with me and check out a car -- I
24 would assume two-thirty p.m., more or less, when I
25 got the information.

- 1 Q. And what then did you do?
- 2 A. I turned to two associates on my squad and asked
3 them to go with me. I checked out the keys to a
4 car, went to the garage, which is a block and a half
5 away, got the car, drove by and picked the two men
6 up, and went to the YMCA, which is four blocks away.
- 7 Q. And the two men were whom?
- 8 A. Dodson Haynes and Philip Lowell.
- 9 Q. At that time did you have in your possession a photo,
10 a photo picture?
- 11 A. Yes, we did. We call it a -- now, the name doesn't
12 come to me -- it comes over a telecopier. We call
13 it a facsimile of a photograph, from Buffalo, yes.
- 14 Q. You brought that to the YMCA, is that correct?
- 15 A. Yes, I did.
- 16 Q. You had a conversation with the manager of the Y?
- 17 A. The resident manager, Mr. Wilson, yes.
- 18 Q. Do you recall that conversation?
- 19 A. Yes. I asked him first if he had registered a man
20 as a resident at the YMCA under the name of Herbert
21 Davis Gordon.
- 22 Q. What was his response?
- 23 A. He said he didn't know, he would have to check. I
24 showed him the picture, the facsimile, and he said,
25 "He does look familiar, I believe he registered today,

1 this morning." Further checking of his records
2 showed yes, he did have a Herbert D. Gordon registered
3 in Room 721.

4 Q. And who was with you at that time?

5 A. Mr. Haynes.

6 Q. And again where was Mr. Lowell?

7 A. Mr. Lowell was sitting in the lobby where he could
8 observe the elevators where people utilizing the
9 facilities above the first floor of the YMCA had
10 to use the elevator or the stairs.

11 Q. Did you and Mr. Haynes then proceed to go to Room 721?

12 A. Yes, after a brief conversation with Mr. Lowell, who
13 stated he thought he saw a man that looked like
14 Gordon go up. We proceeded up to Room 721.

15 Q. And you took the elevator?

16 A. Yes, we did.

17 Q. Then what did you do?

18 A. We walked to the room, and as we got to it, listened,
19 heard nothing, and I knocked on the door.

20 Q. Well, Mr. Meyer, didn't you testify before that the
21 door was open?

22 A. No, it was opened after I knocked, but when we
23 arrived the door was closed.

24 Q. The door was closed, you knocked on the door?

25 A. Yes.

- 1 Q. Did you identif' yourself in any way?
- 2 A. Not at that time, I just knocked.
- 3 Q. Then did somebody open the door?
- 4 A. Yes, Mr. Gordon opened the door.
- 5 Q. What did you do?
- 6 A. I pushed in, told him who I was and that he was
7 under arrest based on the bank robbery warrant from
8 Buffalo, New York.
- 9 Q. You pushed open the door?
- 10 A. Yes.
- 11 Q. Did you knock him over or anything?
- 12 A. I'm sure he went back. I didn't knock him over.
13 We pushed -- forced our way in. I don't think he
14 fell down.
- 15 Q. You then put him under arrest?
- 16 A. Yes, Mr. Haynes did that. I went through, and Mr.
17 Haynes actually put the cuffs on him, as we both
18 identified ourselves.
- 19 Q. Who told him he was under arrest?
- 20 A. Mr. Haynes and I identified ourselves, he put him
21 under arrest.
- 22 Q. And did he handcuff him?
- 23 A. Yes, he did.
- 24 Q. Where were the handcuffs, in front of him or did
25 you handcuff him behind him?

- 1 A. He was handcuffed in front.
- 2 Q. In front?
- 3 A. Yes.
- 4 Q. Did you use any other handcuffs or leg chains or
- 5 anything?
- 6 A. No, sir, nothing.
- 7 Q. Now, how far away from the door were you?
- 8 A. At the time he was handcuffed?
- 9 Q. At the time he wa cuffed.
- 10 A. About a step behind him.
- 11 Q. Well --
- 12 A. I was very close, within a step, step and a half
- 13 away.
- 14 Q. You pushed the door open?
- 15 A. Yes.
- 16 Q. And you took a step or a step and a half, you took
- 17 Mr. Gordon in your control?
- 18 A. No. I more or less -- as the door swung open, he
- 19 kind of went with it. As we forced our way in, I
- 20 stepped past him to allow room for Haynes to come
- 21 in. When the door was shut we both had him kind
- 22 of cornered in the corner there so that we could
- 23 control his movements.
- 24 Q. Were you behind him?
- 25 A. Yes, for a while, and then he turned around once

1 Haynes searched him briefly, just a pat down for
2 weapons, then he turned around and I was facing him.

3 Q. Excuse me. Let's again start at the beginning so we
4 can get a clear picture. You pushed open the door
5 and proceeded through the doorway?

6 A. Yes.

7 Q. And Mr. Haynes followed immediately behind you?

8 A. Yes.

9 Q. And Mr. Gordon was standing there?

10 A. Yes.

11 Q. Okay. Where were you in relation to Mr. Gordon after
12 you entered the room?

13 A. Behind him.

14 Q. Okay. Where was Haynes?

15 A. Behind him.

16 Q. You both were behind Mr. Gordon?

17 A. Yes.

18 Q. When you say behind Mr. Gordon, does that mean his
19 back was to the door?

20 A. No, he was facing the door, his back was to us.

21 Q. Okay. He was facing the door, both of you were
22 directly behind him?

23 A. Yes.

24 Q. Okay. Then did he turn around?

25 A. After Mr. Haynes patted him down, yes.

- 1 Q. Well, when you say after Haynes patted him down, you
2 were directly behind him, okay?
- 3 A. Yes.
- 4 Q. Did you in any way physically touch him?
- 5 A. I don't recall touching him at that point.
- 6 Q. Did Haynes?
- 7 A. Yes.
- 8 Q. Prior to Haynes touching him what did he say?
- 9 A. He told him he was under arrest.
- 10 Q. Did he ask him to squat or put his hands against
11 the wall, did he in any way give him any directions?
- 12 A. Yes.
- 13 Q. What was that?
- 14 A. He told him to face the wall or the door and raise
15 his hands.
- 16 Q. Above his head?
- 17 A. I don't recall that. Raise his hands is all I
18 remember exactly.
- 19 Q. And at that point did he tell him he was under
20 arrest?
- 21 A. Yes.
- 22 Q. Okay. Then what did he do?
- 23 A. He then directed him to turn around and he applied
24 the handcuffs in front.
- 25 Q. Did he first frisk him?

1 A. Yes.

2 Q. And would you explain the type of frisk?

3 A. The frisk wasn't a detailed one, he didn't empty his
4 pockets, go through his shirt pocket or anything
5 like that, or spread him out and get him off balance
6 on the wall, he merely patted his sides and around
7 the belt area, above the groin, for a weapon.

8 Q. And then he turned him around and cuffed him?

9 A. Yes.

10 Q. Now then, Mr. Meyer, actually then, Mr. Gordon, if
11 I'm correct, at the point he was handcuffed he was
12 between the door or the wall and you, is that correct?

13 A. Yes.

14 Q. Okay. Would I be correct in saying that both you
15 and Mr. Haynes' back was to the room?

16 A. Yes.

17 Q. So in order for Mr. Gordon say to get to the bed
18 or to get to any part of the room, he would have to
19 pass you, is that correct?

20 A. Yes.

21 Q. Did you feel at that time that you had him sufficient-
22 ly in your control?

23 A. Physically, yes, but I was worried about the weapons,
24 the possibility of weapons.

25 Q. At the point you cuffed him and frisked him, did

- 1 you feel that you had him physically in your control?
- 2 A. I thought so, but I wasn't sure -- I didn't know the
3 man -- I thought so, yes, that is a fair way to state
4 it.
- 5 Q. It would have been possible, Mr. Meyer, to open the
6 door and have him step outside of the room?
- 7 A. No, because the door opens inside. I believe we
8 could have stopped him before he got out.
- 9 Q. Well --
- 10 A. It's possible to do so, yes.
- 11 Q. How far away was Mr. Gordon from the door?
- 12 A. Probably two or three feet.
- 13 Q. Okay. Would it have been possible for you or Haynes
14 to open up the door and escort Mr. Gordon out into
15 the hallway?
- 16 A. It would be tight. We could have done it.
- 17 Q. What do you mean "it would have been tight"? I
18 don't understand.
- 19 A. Because this is a crowded room. That area behind
20 the door to which you refer is the only open space
21 in that whole room. It is crowded with the bed and
22 the bureau drawers and the desk, two chairs, and
23 there's not room for the TV set, it's up on the wall.
- 24 Q. You took him out at some point?
- 25 A. Yes.

- 1 Q. Then would I be correct -- am I correct in saying
2 that the bed and everything else, the furniture, was
3 behind you and Haynes?
- 4 A. You are right.
- 5 Q. Okay. So except for maybe a step sideways, it would
6 have been possible to open the door and escort him
7 out?
- 8 A. Yes.
- 9 Q. Then after you handcuffed him and frisked him, what
10 did you do?
- 11 A. He knew why he was arrested, that had been said.
- 12 Q. I'm not concerned with that. What did you do?
- 13 A. I asked him if there were any firearms in the room.
14 I believe I used the word "weapons."
- 15 Q. Did you advise him of his rights?
- 16 A. At that point, no, sir, I did not.
- 17 Q. Did you look around the room?
- 18 A. Yes, only after he told me or indicated with a
19 head motion like there was a weapon on the bed.
- 20 Q. Well, would his vision be impaired by you and
21 Haynes?
- 22 A. Partially.
- 23 Q. To the bed?
- 24 A. Partially, perhaps not entirely.
- 25 Q. Now, when he was signaling by his head motion, how

- 1 did you know he was signaling to the bed?
- 2 A. Because he was facing the bed, and with his head
3 motion I assumed that he was motioning toward the
4 bed.
- 5 Q. You assumed he was?
- 6 A. Yes. As a matter of fact, I think he said so. He said,
7 "There on the bed." He had a jacket and the pistol
8 was there. When he referred to the pistol, he said,
9 "On the bed."
- 10 Q. He was fully handcuffed, right?
- 11 A. Yes.
- 12 Q. Now, then when he motioned what did you do?
- 13 A. I went immediately to the bed and recovered the
14 pistol.
- 15 Q. Well, where was Haynes?
- 16 A. Watching Mr. Gordon.
- 17 Q. Was he right next to Mr. Gordon?
- 18 A. Yes. As a matter of fact, he had him under the arm.
19 His hand was under his armpit.
- 20 Q. He was holding him?
- 21 A. Yes.
- 22 Q. Now, how tall is Mr. Haynes?
- 23 A. Five-eight at the most.
- 24 Q. Approximate weight?
- 25 A. 160 lbs.

- 1 Q. Now then, am I correct, Mr. Meyer, in saying you had
2 to turn around after Mr. Gordon motioned to you to
3 retrieve the weapon?
- 4 A. Yes.
- 5 Q. When you turned around you observed the bed?
- 6 A. Yes.
- 7 Q. Was the bed made or unmade?
- 8 A. It was made.
- 9 Q. It was made. Where was the gun?
- 10 A. Lying next to his jacket, in a holster, a brown
11 holster.
- 12 Q. Mr. Meyer, I show you Government's Exhibit 7, is
13 that the gun that was on the bed?
- 14 A. Yes, it is.
- 15 Q. Where was this in relation to the jacket, this gun?
- 16 A. They were in close proximity. Whether it was exactly
17 alongside or partially under it, I don't know, but,
18 as I recall, I could see at least a portion of the
19 pistol on the bed next to the jacket. That is the
20 best I can remember.
- 21 Q. Other than the jacket was there anything else on
22 the bed?
- 23 A. I don't recall anything, no.
- 24 Q. Okay. The bed was made?
- 25 A. Yes.

- 1 Q. Was it a single bed or double?
- 2 A. Single bed.
- 3 Q. Okay. When you turned around were you able to
4 observe the gun without Mr. Gordon telling you
5 anything?
- 6 A. At least part of it, yes.
- 7 Q. Then what did you do?
- 8 A. I asked him if there were any more weapons.
- 9 Q. Excuse me. Did you walk over to the bed?
- 10 A. Yes, it was only one step. I took a step, got the
11 pistol off the bed, yes.
- 12 Q. Did you take the jacket off the bed?
- 13 A. No, I don't recall taking the jacket.
- 14 Q. Did you search through the jacket?
- 15 A. No.
- 16 Q. Well, then what did you do?
- 17 A. I asked Mr. Gordon if there were any other weapons
18 in the room.
- 19 Q. Where was Mr. Gordon at that time?
- 20 A. Still behind the door there with Mr. Haynes.
- 21 Q. Was he standing?
- 22 A. Yes, he was standing.
- 23 Q. What did you ask him?
- 24 A. If there were any more weapons in the room beside
25 the one I found on the bed.

1 Q. What did he say?

2 A. He said yes, there was another one in the bag in the
3 closet.

4 Q. Then what did you do?

5 A. I went immediately to the bag in the closet and
6 recovered the ~~9 millimeter automatic~~.

7 Q. That is this gun?

8 A. Yes.

9 Q. Government's Exhibit 27, is that correct?

10 A. Yes, it is.

11 Q. Then, Mr. Meyer, what did you do after you retrieved
12 the gun?

13 A. { After I retrieved the gun I sat down on the bed with
14 Mr. Gordon, took out a printed copy of his rights,
15 and read those rights to him, allowed him to look
16 at and read those rights, and then asked him to sign,
17 which he refused to do.

18 Q. Did you or Mr. Haynes read him the rights?

19 A. I did.

20 Q. This was while you were seated on the bed?

21 A. Yes, sir.

22 Q. Then what occurred after you read him his rights,
23 Mr. Meyer?

24 A. After I read him his rights he refused to sign the
25 waiver of those rights, but agreed to answer

1 questions of his choice, that is, he said he under-
2 stood, but that he would answer questions if he
3 could. So I phrased several questions to him that
4 had to do with his possible involvement in this bank
5 robbery.

6 Q. Do you recall what the questions were?

7 A. Yes. One was "Did you rob the bank?"

8 Q. What was his response?

9 A. He just refused to answer the question. He said
10 at that time he better not answer any questions
11 without an attorney.

12 Q. At that point did he request an attorney?

13 A. No, he did not.

14 Q. What exactly did he say?

15 A. He just said he didn't think he should answer that
16 question --

17 Q. Would you read back --

18 A. -- without an attorney. He said that, as I recall
19 it.

20 Q. Then did you continue to interrogate him?

21 A. I asked another question or two, which he refused
22 to answer also.

23 Q. Do you recall what those questions were?

24 A. Not exactly, no, but they were pertinent questions
25 that -- you know, his possible involvement in the

1 bank robbery.

2 Q. Do you recall what his answer was? ✓

3 A. He refused to answer.

4 Q. Did he likewise say unless he had an attorney?

5 A. I don't recall that he repeated that. He did refuse
6 to answer.

7 Q. Then what occurred?

8 A. I then explained to Mr. Gordon it was our normal
9 procedure to search the room, and I said, "If you
10 have no objection, we will search after you have
11 read this permission to search." I pulled another
12 folded form out of my pocket, which we utilize, that
13 has to do with explaining to him his right to refuse
14 the search of the room. He said he would have no
15 objection, and signed that form.

16 Q. Well, did he understand what he was signing?

17 A. He said he did. He said he understood.

18 Q. Do you know anything about Mr. Gordon?

19 A. Well, you want to get specific?

20 Q. Do you know anything about his educational background?

21 A. No.

22 Q. Do you know anything about his personal life?

23 A. Only what he told me, and a review of his arrest
24 record.

25 Q. Well, when you say, "only what he told me," did

1 you have any conversation with him?

2 A. Yes.

3 Q. Do you recall what those conversations were?

4 A. He said he had just gotten out of prison a year or
5 so before that, and had served time on parole in
6 the Buffalo area and, as I remember, he named the
7 prison, Attica Prison.

8 Q. Well, when were the conversations, were they after
9 the three questions you asked?

10 A. I believe this about Attica Prison came -- I don't
11 remember -- it could have been in the car, it could
12 have been in the room. I don't remember where he
13 actually told me that. I would be wrong to try to
14 pinpoint what I don't remember.

15 Q. You don't recall if you had any conversation with
16 Mr. Gordon prior to him signing this consent which
17 is marked as Government's Exhibit 14?

18 A. Yes, I asked him some questions about the bank
19 robbery, which he refused to answer.

20 Q. Other than those three questions?

21 A. I don't recall any more, no.

22 Q. Where was Mr. Gordon seated, on the bed?

23 A. Yes, toward the head of the bed, which is closest
24 to the door.

25 Q. He was handcuffed?

- 1 A. Yes.
- 2 Q. Where was Haynes?
- 3 A. Standing beside him.
- 4 Q. Where were you?
- 5 A. Seated on the foot of the bed.
- 6 Q. So then Mr. Haynes was towering over Mr. Gordon, you
7 were seated next to Mr. Gordon, is that correct?
- 8 A. Yes, as much as a five foot seven man can tower, he
9 stood beside him.
- 10 Q. And that was at the point at which you asked him to
11 sign the consent form?
- 12 A. Somewhere along there, yes.
- 13 Q. You asked him to sign the consent form after he
14 indicated to you that he would not sign the waiver
15 form unless he had an attorney, is that correct?
- 16 A. Right.
- 17 Q. After he signed the consent form then what did you
18 do, Mr. Meyer?
- 19 A. I searched the room in detail.
- 20 Q. Okay. Let's describe the room. How big is it?
- 21 A. It is a narrow room, a long, narrow room, seven feet
22 wide by ten and a half feet long.
- 23 Q. So if we walk in the doorway of the room, it would
24 be narrow, is that correct, and long, around ten
25 feet?

- 1 A. Yes.
- 2 Q. It would be around seven feet wide?
- 3 A. Yes.
- 4 Q. Do you recall where the bed was in relation to the
5 room?
- 6 A. Yes. As you walk in the door the bed was on the left.
- 7 Q. On the left?
- 8 A. Yes.
- 9 Q. What was on the right?
- 10 A. A bureau of drawers.
- 11 Q. Where was the closet?
- 12 A. On the right before you come to the bureau of drawers.
- 13 As you come in the door, immediately on your right
- 14 was the closet.
- 15 Q. When you walk in the door, immediately on your right
- 16 is a closet?
- 17 A. Yes.
- 18 Q. And how far away from the door would you say the
19 bed was?
- 20 A. Four feet.
- 21 Q. Okay. Was there a door on the closet?
- 22 A. Yes.
- 23 Q. Was the door closed?
- 24 A. I don't recall.
- 25 Q. Well, there was a door, you don't recall whether it

1 it was closed?

2 A. I went to look at the room before I came here to
3 this hearing. There is a full door on the closet,
4 every bit as big as the door that enters the room.
5 I don't recall at the time of the arrest whether it
6 was open or closed.

7 Q. You went into the closet to retrieve a gun, is that
8 correct?

9 A. Yes.

10 Q. And the gun was in the white bag which is marked
11 Government's Exhibit 13, this bag?

12 A. Yes.

13 Q. Where was this bag in the closet?

14 A. On the floor. On the right, as you face the closet,
15 on the floor.

16 Q. On the floor to the right?

17 A. Yes.

18 Q. Do you recall if the bag was zipped up?

19 A. As I recall, it was already open.

20 Q. You reached in and retrieved the gun?

21 A. Yes.

22 Q. Did you leave the bag there on the floor?

23 A. I believe so, because I put the weapon on top of the
24 bureau of drawers with the other weapon. I left the
25 bag there.

- 1 Q. Did you search the bag to see if there was any other
2 guns?
- 3 A. I could see there was no others.
- 4 Q. You left the bag in the closet?
- 5 A. Yes.
- 6 Q. On the floor?
- 7 A. Yes.
- 8 Q. You put the gun on the dresser?
- 9 A. Yes.
- 10 Q. Now --
- 11 A. After I unloaded it first, as I had done with the
12 other, and placed them both on top of the bureau
13 there.
- 14 Q. Then you got Mr. Gordon to sign a consent form and
15 you went back into the closet?
- 16 A. Yes.
- 17 Q. Then you retrieved the bag?
- 18 A. Yes.
- 19 Q. You then took the bag out of the closet?
- 20 A. Yes.
- 21 Q. Did you look in the bag while it was in the closet?
- 22 A. Not on that occasion. I took it out of the closet.
- 23 Q. Where did you put it?
- 24 A. On top of the bureau and emptied it so that I could
25 go through the contents.

- 1 Q. What did you find in there?
- 2 A. I found the Amtrack tickets, the demand note, ammunition for both pistols, some soiled underwear. That
- 3
- 4 is all I can remember.
- 5 Q. Did you search the rest of the room?
- 6 A. Yes, I did.
- 7 Q. How long were you in the room, Mr. Meyer?
- 8 A. We were there less than a half hour. I would say
- 9 twenty-five minutes.
- 10 Q. How long did it take you, if you recall, to search
- 11 the room after you located the white vinyl bag in
- 12 the closet?
- 13 A. Not anymore than ten minutes.
- 14 Q. Did you engage in conversation with Mr. Gordon?
- 15 A. I don't recall any at that time.
- 16 Q. Who did the actual searching, you or Haynes?
- 17 A. I did.
- 18 Q. Where was Haynes?
- 19 A. He was watching Mr. Gordon.
- 20 Q. Where was Mr. Gordon?
- 21 A. Seated on the bed.
- 22 Q. Was he still handcuffed?
- 23 A. Yes.
- 24 Q. Now, I believe it was your testimony that all of the
- 25 money, the two twenty dollar bills, marked as

- 1 Government's Exhibits 3 and 4, Government's Exhibit
2 5, were found in the bag, in the white vinyl bag?
- 3 A. Only two of those. They have my initials on the
4 front. Two of the bait bills were found in the
5 bag. You will see my L.M. on the front.
- 6 Q. Government's Exhibits 3 and 4?
- 7 A. Yes. There is my initials on the front of each.
- 8 Q. This was in the white vinyl bag?
- 9 A. Yes.
- 10 Q. Mr. Meyer, I show you Government's Exhibit 8, was
11 this also in the white vinyl bag?
- 12 A. Yes, it was.
- 13 Q. Do you recall where the Amtrack tickets were located?
- 14 A. As I recall, they were in the bag also, the white
15 vinyl bag.
- 16 Q. I believe Government's Exhibit 6, the change in the
17 amount of two sixty-five, was also in the white --
- 18 A. Not all of it. Some of it was recovered from his
19 pockets, and there was a small amount recovered from
20 the bag.
- 21 Q. Where did you say this money, \$294, marked as
22 Government's Exhibit 5, was located?
- 23 A. Part of it was found on his person, part of it was
24 found in the bag.
- 25 Q. When was it found on his person? The amount that

1 was found on his person, when?

2 A. I'm trying to recall. I'm sure it was after we
3 read him his rights, and we searched his person in
4 detail, prior to the time I gave him -- read the
5 room search permission slip to him.

6 Q. Now, Mr. Meyer, when did you leave Room 721?

7 A. I would think approximately three-thirty.

8 Q. Well, I think you testified you arrived at three-
9 thirty.

10 Q. No, we arrived shortly after three, 3:05 or 3:10,
11 somewhere in that area. We were there like twenty-
12 five minutes. I assume we left around three-thirty.

13 Q. You arrived at three-ten and you left about three-
14 thirty?

15 A. Yes. Maybe a little ahead of three-ten. Three-five,
16 as I recall, somewhere in that area.

17 Q. You and Mr. Haynes and Mr. Gordon came out of the room
18 and went into an FBI vehicle, is that correct?

19 A. Right. We had to go down the elevator, of course,
20 and the vehicle was in front of the YMCA Building,
21 yes.

22 Q. And also did Mr. Lowell accompany you?

23 A. Mr. Lowell, yes, to the jail.

24 Q. Now, would you just again testify as to where you
25 were seated in the automobile?

1 A. Yes. Mr. Gordon and I were in the rear seat. I
2 was behind the driver, he was behind the passenger.
3 In the front seat Mr. Haynes was driving, Mr. Lowell
4 was in the front passenger's seat.

5 Q. Now, I believe then you continued to have conver-
6 sations with Mr. Gordon?

7 A. Yes, conversation only after I showed him the
8 facsimile photograph from the bank, to which he
9 responded, "Even my mother would recognize me in
10 that picture."

11 Q. Do you recall then what you said?

12 A. Yes. I pointed to the white bag in the picture and
13 compared it to the one we had recovered in the room,
14 and said, "Is this the bag -- indicating the one
15 from the room -- is this the bag you took into the
16 bank?" He said, "Yes."

17 Q. Well, Mr. Meyer, I show you Government's Exhibit
18 15, which is the facsimile, how did you know that
19 was a bag?

20 A. Primarily from the information received by telephone
21 from Buffalo. They had described such a bag, even
22 said it was trimmed in red. I assumed from their
23 information that the witness had given them that
24 information from their experiences in the bank, not
25 from the photograph. They hadn't seen the photograph,

1 but when they furnished us that information from
2 Buffalo it did include a description of a white
3 vinyl bag carried by the robber at the time he was
4 in the bank.

5 Q. You believe that is the white vinyl bag?

6 A. I didn't know, that is why I asked him. I pointed
7 to it and asked him if that is the bag, the same
8 one he carried into the bank. He confirmed it.

9 Q. What was his response?

10 A. His response was an affirmative yes.

11 Q. Then what occurred?

12 A. After that point I believe we got into the conver-
13 sation of the weapons. I asked him then, "Have you
14 used those weapons to commit any other crime?" He
15 said, "No, the weapons were purchased legally, they
16 have never been used." So I then got into the purpose
17 of our hurrying to the jail, to try to catch the
18 magistrate before he got home after four o'clock,
19 and explained to him the purpose of a first appearance,
20 and so forth.

21 Q. Well, would you continue to interrogate an individual
22 after he had expressed a desire to have an attorney,
23 is that normally your procedure?

24 A. No. He expressed no desire for an attorney. He
25 merely stated that he didn't want to answer that

1 question without an attorney.

2 Q. Which question?

3 A. The one I had posed to him in the room.

4 Q. When you showed him Government's Exhibit 12, and
5 read him his rights, didn't he say he would rather
6 not sign anything until he consulted with an attorney?

7 A. Right, exactly, but he didn't refuse to talk to us.
8 I explained to him that just because he didn't sign
9 that doesn't mean that he could not talk to us,
10 that was a choice he had to make.

11 Q. When did you explain this to him?

12 A. Prior to posing any questions to him.

13 Q. When, in the room?

14 A. Yes.

15 Q. Or in the car?

16 A. In the room.

17 Q. You never said anything to him in the car, did you?

18 A. About his rights you mean?

19 Q. Right.

20 A. I don't recall any, no.

21 Q. You didn't refresh his recollection about his rights,
22 did you?

23 A. I don't recall doing that, no, sir.

24 Q. How long were you in the automobile, Mr. Meyer?

25 A. Ten minutes at the most.

- 1 Q. And where did you take Mr. Gordon?
- 2 A. From the YMCA to the Dallas County Jail.
- 3 Q. Did you prepare any notes in connection with this
- 4 incident that occurred on October 6th, Mr. Meyer?
- 5 A. Yes, I took notes, but they have since been transcribed
- 6 into a report.
- 7 Q. Is that the Form 302?
- 8 A. Yes, it is.
- 9 Q. Mr. Meyer, I show you Court Exhibit 19, is that the
- 10 Form 302 prepared by you?
- 11 A. Yes, dictated by myself to a stenographer who tran-
- 12 scribed it, yes.
- 13 Q. That is, dictated from your notes?
- 14 A. Yes.
- 15 Q. Which have been since destroyed?
- 16 A. Yes.
- 17 Q. Is there any mention in that Form 302 about the
- 18 admission made by Mr. Gordon?
- 19 A. Yes.
- 20 Q. And is there any information in that 302 relative to
- 21 where that admission took place?
- 22 A. Negative. It says that he was interviewed in his
- 23 room at the YMCA. In a separate paragraph about
- 24 his admission, it doesn't specifically name the
- 25 place.

- 1 Q. Is there any indication in this form as to where you
2 found the weapons?
- 3 A. No, just found in his possession.
- 4 Q. Is there any indication in that form as to Mr.
5 Gordon consenting to a search of his room?
- 6 A. No, there isn't.
- 7 Q. Wouldn't you consider that normal to put in a Form
8 302?
- 9 A. Yes. I believe it is on a separate 302, where I
10 list all the evidence.
- 11 Q. I meant the fact that he consented to the search.
- 12 A. Yes, and I think if you will -- there is another
13 302 that lists the evidence. If it is mentioned, it
14 should be on that one.
- 15 Q. Do you have that 302?
- 16 A. I don't have it. It should be in your report.
- 17 MR. RINALDO: Does the Government have the 302
18 that he is referring to?
- 19 MR. WILLIAMS: Your Honor, despite the fact that this
20 is only a hearing, I have marked and given
21 to Mr. Rinaldo all 3500 material. They
22 are marked as Court Exhibits. Here is one
23 marked 23, which is an inventory. There is
24 an interview log and a couple of other 302's
25 made by Mr. Meyer.

1 MR. RINALDO: Well, is this the only other 302?

2 MR. WILLIAMS: No. You have an exhibit list. I
3 think the better way to proceed is to let
4 the attorney ask the question of the witness,
5 and if he needs his memory refreshed by
6 referring to the exhibits, we can do that.

7 BY MR. RINALDO:

8 Q. Do you recall putting in any of the 302 forms
9 information relative to where the weapons were found?

10 A. Specifically in the room where they were found?

11 Q. Yes.

12 A. No.

13 Q. Did you put in any of the 302's the fact that Mr.
14 Gordon consented to a search?

15 A. I'm not sure. I would have to check the 302's
16 myself.

17 MR. WILLIAMS: Your Honor, I object. The question
18 is not what is reported in the 302's, the
19 question is what his testimony is.

20 MR. RINALDO: Your Honor, it is relevant to show
21 that Mr. Meyer prepared a 302 from his
22 original notes, and from my review of all
23 of the 302's, there is nothing in the notes
24 which indicates in any way that Mr. Gordon
25 consented to the search.

1 THE COURT: It seems to me there is some question
2 between counsel whether you have all the
3 302's in your immediate possession to be
4 shown to the witness.

5 BY MR. RINALDO:

6 Q. Mr. Meyer, I show you Court Exhibit 23 and Court
7 Exhibit 21, are these reports prepared by you or
8 dictated by you?

9 A. Yes.

10 Q. Now, use those to refresh your recollection. Is
11 there anything in those reports to indicate that
12 Mr. Gordon consented to a search?

13 A. Yes, there is.

14 Q. Where is that?

15 A. Court Exhibit 23. "Shortly thereafter Gordon signed
16 a written consent to search his room and closet. The
17 following items were collected as possible evidence."

18 Q. Is there anything in these reports as to where the
19 guns were located?

20 A. Just generally in the room. It doesn't say specif-
21 ically where they were found, no.

22 Q. Okay. Is there anything in those reports indicating
23 where Mr. Gordon made this admission?

24 A. Yes, on another 302, where it says, "Gordon admitted
25 committing the robbery mentioned above alone, and

1 riding from Buffalo, New York to Dallas, Texas by
2 Amtrack train."

3 Q. No, my question to you is, is there anything in here
4 that the admission was made in the automobile on the
5 way to the magistrate?

6 A. No.

7 MR. RINALDO: Could we have about a five minute
8 recess?

9 THE COURT: We will take a ten minute recess.
10 Step down, Mr. Meyer.

11 (Thereupon the court was in recess
12 at 12:45 P.M.)

13 (Proceedings resumed, pursuant to
14 recess, commencing at 1:10 P.M. Counsel
15 present, defendant present.)

16
17 BY MR. RINALDO:

18 Q. Mr. Meyer, just a few brief questions. When you
19 knocked on the door of Room 702 --

20 THE COURT: 721.

21 BY MR. RINALDO:

22 Q. I'm sorry. 721, was your gun drawn?

23 A. No.

24 Q. Was Haynes' gun drawn?

25 A. No.

1 Q. After pushing your way into the room or at any time
2 while you were in the room as your gun or Mr. Haynes'
3 gun drawn?

4 A. No.

5 MR. RINALDO: I have nothing further, your Honor.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: I have a few more questions, yes.

8 REDIRECT EXAMINATION BY MR. WILLIAMS:

9 Q. Mr. Meyer, do you recall what time you initially
10 arrived at the YMCA?

11 A. We left the office about two-thirty. I would assume
12 we arrived right after three, 3:05.

13 Q. All right. Then there came a time when you went up to
14 Room 721, correct?

15 A. Right.

16 Q. What time did you get up there?

17 A. I spent some time with Mr. Wilson looking through
18 the records, and so forth, showing the facsimile.
19 We got upstairs about three-thirty. About twenty
20 minutes we were with him.

21 Q. What time did you leave the room upstairs to go to
22 the Dallas County Jail?

23 A. Shortly after four.

24 Q. All right, okay.

25 THE COURT: Is that all?

1 MR. WILLIAMS: No, I have a few more questions, your
2 Honor.

3 BY MR. WILLIAMS:

4 Q. Mr. Meyer, with reference to Government's Exhibit 12,
5 which is entitled Interrogation-Advice of Rights,
6 there came a time when you actually exhibited that to
7 Mr. Gordon?

8 A. Correct.

9 Q. I think you testified that he did not sign that?

10 A. That is correct.

11 Q. What, if anything, did he say to you about that after
12 he saw that form and he so advised you that he was
13 not going to sign it, what were his words?

14 A. He merely said that he thought it would be unwise
15 for him to sign that without consulting an attorney.

16 Q. All right. Did he say anything else to you?

17 A. I went on to explain that although he didn't sign
18 it, it doesn't mean that he can't answer questions
19 of his choice, which he agreed to do verbally. He
20 did not refuse to talk to us. He just refused to
21 sign the form.

22 MR. WILLIAMS: All right. I have no further questions.

23 RECROSS EXAMINATION BY MR. RINALDO:

24 Q. Mr. Meyer, after you explained to him that, although
25 he did not sign the form he could talk with you, did

1 he indicate any desire to talk to you?

2 A. How do you mean? I don't know what you mean by
3 "indicate a desire."

4 Q. The question is self explanatory. You say you
5 showed him Government's Exhibit 12, you asked him
6 if he wanted to sign a waiver, he indicated to you
7 that it would be unwise for him to sign without
8 consulting his attorney, then you continued to
9 engage in conversation with him, and I believe your
10 testimony was you indicated to him although he
11 didn't sign, it did not mean he could not refuse
12 to talk to you, is that it? What were your exact
13 words?

14 A. No, I didn't infer that he could not refuse to talk
15 to us. On the contrary, I thought he understood
16 that he could elect to sign or not to sign, he could
17 elect to talk or not to talk.

18 Q. How was it that you thought he understood, what led
19 you to believe that?

20 A. By his statement that he didn't feel he should sign
21 that without consulting an attorney, indicating he
22 had an aversion to signing at that point, but he
23 showed no aversion to talking, answering questions
24 of his choice.

25 MR. RINALDO: I have nothing further. Thank you.

1 BY MR. WILLIAMS:

2 Q. Was the situation that some questions were answered
3 by him?

4 A. Yes.

5 Q. Some were not?

6 A. Yes.

7 MR. WILLIAMS: All right. I have no further questions.

8 BY MR. RINALDO:

9 Q. Mr. Meyer, wasn't your testimony that you actually
10 only asked him three questions?

11 A. That is all I could recall at that point, yes.

12 MR. RINALDO: Thank you. No further questions.

13 MR. WILLIAMS: I have no more witnesses.

14 THE COURT: All right.

15 (Witness excused.)

16

17 * * * * *

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Decision of Court

1 PROCEEDINGS OF JANUARY 30, 1976, COMMENCING AT 9:15 A.M.

2

3 (Counsel present, defendant present,
4 jury panel present.)

5

6 (Thereupon the following conference
7 ensued at the side bar:

8 THE COURT:

9 I reserved decision relative to the
10 admissibility of the two guns which were
11 found in the YMCA room. I have decided
12 that the 9 millimeter gun which was found
13 in the closet, is not to come into
14 evidence. The other gun, which was on
15 the bed, can.

16 MR. RINALDO:

17 Your Honor, I am a little confused as
18 to the reason why the second gun would be
suppressed and not the first.

19 THE COURT:

20 The first gun was very close to
where he was, and it comes within the
21 justification of putting down danger, I
22 am sure, it was one step away from where
23 he was and, consequently, they had a duty
24 to themselves really to protect themselves
25 and to get that gun. The other one did not

1 present that danger. Now, I know that in
2 the testimony there is nothing there
3 indicating the posture of this gun, where
4 it was. There was something about a
5 jacket being on the bed, but there is no
6 testimony saying whether this was in plain
7 view or not. I am assuming it was not in
8 plain view. There was sufficient justifi-
9 cation to ask him about a weapon and
10 grabbing the one that was right there.

11 MR. RINALDO: For the record, I would appreciate
12 it if it would be possible to have your
13 reasoning on why the bag and the other
14 evidence seized would not be suppressible.

15 THE COURT: All subject to the voluntary consent

16
17 (Thereupon the conference at the
18 side bar was terminated.)

19
20 CLERK OF THE COURT: Criminal 75-234, the United States
21 versus Herbert Davis Gordon.

22 MR. WILLIAMS: The Government is ready.

23 MR. RINALDO: The defense is ready, your Honor.

24 THE COURT: All right. Ladies and gentlemen,
25 this is a criminal case. The Government

1 CHARGE OF THE COURT
2

3 THE COURT: Ladies and gentlemen, now I will
4 give you the instructions on the principles
5 of law which will govern your delibera-
6 tions, and I will try to keep this brief,
7 but of necessity there are certain things
8 which I am required to cover and which
9 will take a little bit of time.

10 Now, the lawyers have said and I
11 have said, and I want to remind you, that
12 it is your duty and yours alone to
13 determine what the facts are in the case.
14 Of course, that includes, basically, the
15 guilt or innocence of the defendant,
16 Herbert Davis Gordon, in this case as
17 charged.

18 I may refer briefly to my recollec-
19 tion of the facts at some point or another,
20 but if I do it is merely to assist you in
21 understanding the rules of law which I am
22 giving to you. You should not consider
23 any reference that I have made during the
24 trial as in any way indicative of the
25 verdict that you should render. The

Now, I instruct you that as a matter
of law you are not to be influenced by
the fact that the Government of the
United States is a party to this action,
for I charge you that the Government is
to be considered the same as any other
party, and that the Assistant United
States Attorney, Mr. Williams, is to be
considered as any other lawyer would be
considered.

Also, it is your duty merely to determine the guilt or innocence of the defendant, you should not concern yourself in any way with the punishment the defendant may receive if convicted, and

1 you are not to speculate concerning it.

2 The indictment which you will have
3 with you in the jury room charges that
4 the defendant, Herbert Gordon, with
5 three separate criminal acts. It is
6 charged in count one of the indictment,
7 and I will quote it:

8 "On or about the 3rd day of October
9 1975, in the Western District of New York,
10 the defendant, Herbert Davis Gordon, did
11 willfully and knowingly and unlawfully,
12 and by force, violence and intimidation,
13 take from the person and presence of
14 Eileen Batt, and others, approximately
15 \$685 in money, belonging to and in the
16 care, custody, control, management and
17 possession of the First Federal Savings
18 & Loan Association of Rochester, New York,
19 Homestead Division, 360 Pearl Street,
20 Buffalo, New York, the deposits of which
21 were then insured by the Federal Savings
22 & Loan Insurance Corporation; all in
23 violation of Title 18, United States Code,
24 Section 2113(a)."

25 That section of the law provides in

1 pertinent part:

2 "Whoever by force and violence or
3 by intimidation takes from the person or
4 presence of another any money belonging
5 to or in the care, custody, control,
6 management or possession of any savings
7 and loan association shall be guilty of
8 an offense against the laws of the United
9 States."

10 There are three essential elements
11 which must be proved beyond a reasonable
12 doubt to establish the offense charged
13 in count one of the indictment. First,
14 that the money taken belonged to or was
15 in the care, custody, control, management
16 or possession of a savings and loan
17 association whose deposits were insured
18 by the Federal Savings & Loan Insurance
19 Corporation. Second, the act or acts of
20 taking such money from the person or
21 presence of another was by force and
22 violence or by intimidation. Third, that
23 the doing of such act or acts was done
24 willfully.

25 The law recognizes two kinds of

1 possession, actual possession and
2 constructive possession. A person who
3 knowingly has direct physical control
4 over a thing at a given time is in actual
5 possession of it. A person who, although
6 not in actual possession, knowingly has
7 both the power and the intention at a
8 given time to exercise dominion or ~~control~~
9 over a thing, either directly or through
10 another person or persons, is then in
11 constructive possession of it. The law
12 recognizes also that possession may be
13 sole or joint. If one person alone has
14 actual or constructive possession of a
15 thing, possession is sole. If two or
16 more persons share actual or constructive
17 possession of a thing, possession is
18 joint.

19 If you should find beyond a reasonable
20 doubt, and I will define that term
21 later, from the evidence in the case that
22 at the time and place of the alleged
23 offense the Homestead Bank, either alone
24 or jointly with others, had actual or
25 constructive possession of the money

1 described in the indictment, then you
2 may find that such money was in the
3 possession of the Homestead Bank within
4 the meaning of the word "possession" as
5 used in the law and these instructions.

6 Now, you will note that I have said
7 that the acts charged must have been done
8 willfully. An act is done willfully if
9 it is done voluntarily and purposely,
10 and with the specific intent to do that
11 which the law forbids, that is to say,
12 with a purpose either to disobey or dis-
13 regard the law, and particularly to do
14 the act charged.

15 To take or attempt to take by intimi-
16 dation means willfully to take or to
17 attempt to take by putting in fear of
18 bodily harm. Such fear must arise from
19 the willful conduct of the accused,
20 rather than from some mere temperamental
21 timidity of the victim. However, the
22 fear of the victim need not be so great as
23 to result in terror, panic or hysteria.

24 A taking or attempted taking by
25 intimidation must be established by proof

of one or more acts or statements of the accused which were done or made in such a manner or under such circumstances as would produce in the ordinary person a fear of bodily harm. However, actual fear need not be proved. Fear, like intent, may be inferred from statements made and acts done or admitted by the accused, and by the victim as well, and from all of the surrounding circumstances shown by the evidence in the case. That deals with count one.

13 Count two of the indictment charges
14 as follows:

15 "On or about the 3rd day of October
16 1975, in the Western District of New York,
17 the defendant, Herbert Davis Gordon, did
18 willfully and knowingly and unlawfully
19 take and carry away, with intent to steal
20 and purloin, from the First Federal
21 Savings & Loan Association of Rochester,
22 New York, Homestead Division, 360 Pearl
23 Street, Buffalo, New York, the sum of
24 \$635 in money belonging to and in the care
25 custody, control, management and possession

1 " of said bank, the deposits of which were
2 then insured by the Federal Savings &
3 Loan Insurance Corporation; all in
4 violation of Title 18, United States
5 Code, Section 2113(b)."

6 That Section 2113(b) provides in
7 pertinent part as follows:

8 "Whoever takes and carries away,
9 with intent to steal or purloin, any
10 money exceeding \$100 belonging to or in
11 the care, custody, control, management or
12 possession of any savings and loan
13 association shall be guilty of an offense
14 against the laws of the United States. "

15 The elements of the crime charged
16 in count two, and each of which must be
17 proved beyond a reasonable doubt to
18 establish the offense charged, are, first,
19 that the money taken belonged to or was
20 in the care, custody, control, management
21 or possession of a savings and loan
22 association whose deposits were insured
23 by the Federal Savings & Loan Insurance
24 Corporation. Second, the act or acts of
25 taking or carrying away such money of a

1 value in excess of \$100, as charged in the
2 indictment. Third, the doing of such
3 act was with the intent to steal or pur-
4 loin. Again, you will note that the act
5 or acts must have been done with specific
6 intent, that is, they must have been done
7 voluntarily and purposely, and with
8 specific intent to steal or purloin.

You will note that Subdivision (a) of the Statute, which was what I referred to when I talked about count one of the indictment, requires that the taking from a savings and loan association be accomplished by force and violence or by intimidation. However, neither force nor violence nor intimidation need be established to prove a violation of Subdivision (b) of the Statute, that is the offense which I have discussed in connection with count two of the indictment. It is merely the taking and carrying away of money from an insured savings and loan association with the requisite intent that is required to sustain a conviction under count two of the indictment. Thus, you

1 will readily see that if a person commits
2 an offense under Subdivision (a), that is,
3 by use of force and violence or by
4 intimidation, he may also by the taking
5 and carrying away of money with the
6 requisite intent be guilty of a violation
7 or an offense under Subdivision (b) of
8 the Statute.

9 A person takes and carries away
10 money with the intent to steal or purloin
11 when he obtains property belonging to
12 another without permission and with the
13 intent to deprive the owner of the property.

14 Finally, we have count three of the
15 indictment which says that:

16 "On or about the 3rd day of October
17 1975, in the Western District of New York,
18 the defendant, Herbert Davis Gordon, by
19 force, violence and intimidation did take
20 from the person and presence of Eileen
21 Batt approximately \$685 in money belonging
22 to and in the care, custody, control,
23 management and possession of the First
24 Federal Savings & Loan Association of
25 Rochester, New York, Homestead Division,

1 "360 Pearl Street, Buffalo, New York, the
2 deposits of which were then insured by
3 the Federal Savings & Loan Insurance
4 Corporation, and Herbert Davis Gordon in
5 committing the aforesaid offense did
6 assault Eileen Batt and put in jeopardy
7 the life of Eileen Batt with the use of
8 a weapon, to wit, a handgun; all in
9 violation of Title 18, U. S. Code,
10 Section 2113(d)."

11 That section provides in pertinent
12 part: "Whoever in committing or in
13 attempting to commit any offense charged
14 in Subsection (a) -- which was charged
15 to you under count one of the indictment --
16 assaults any person or puts in jeopardy
17 the life of any person by the use of a
18 dangerous weapon or device shall be
19 guilty of an offense against the laws of
20 the United States."

21 In order to sustain its burden under
22 count three of the indictment, the
23 Government must prove each of four essen-
24 tial elements. First, the ac or acts of
25 taking from the person or presence of

1 another money belonging to or in the care,
2 custody, control, management or possession
3 of a savings and loan association whose
4 deposits are insured by the Federal
5 Savings & Loan Insurance Corporation.
6 Second, the act or acts of taking such
7 money by force or violence or by means
8 of intimidation. Third, the act or acts
9 of assaulting or putting in jeopardy the
10 life of any person by the use of a
11 dangerous weapon or device while engaged
12 in stealing such money from a savings and
13 loan association, as charged. Four, doing
14 such act or acts willfully.

15 Now, as stated before, the burden is
16 always upon the prosecution, the Government,
17 to prove beyond a reasonable doubt every
18 essential element of the crime charged,
19 and the law never imposes upon a defendant
20 in a criminal case the burden or duty of
21 calling any witness or producing any
22 evidence.

23 Now, if you should find beyond a
24 reasonable doubt from the evidence in the
25 case that the accused, Mr. Gordon, did

1 willfully commit robbery of the savings
2 and loan association, as charged, then
3 you must proceed to determine whether the
4 evidence in the case establishes that the
5 accused, in committing robbery of a
6 savings and loan association, assaulted
7 or put in jeopardy the life of Eileen
8 Batt, as charged in the indictment. You
9 will notice particularly that it is Eileen
10 Batt with whom we are concerned, we are
11 not concerned with Frances Bialck.

12 Any willful attempt or threat to
13 inflict injury on the person of another,
14 when coupled with an apparent present
15 ability to do so, or any intentional dis-
16 play of force, such as would give the
17 victim reason to fear or expect immediate
18 bodily harm, constitutes an assault. An
19 assault may be committed without actually
20 touching or striking or doing the bodily
21 harm to the person of another. So a
22 person who has the apparent present ability
23 to inflict bodily harm or injury upon
24 another person, and willfully attempts or
25 even threatens to inflict such bodily harm,

1 as by intentional flourishing or pointing
2 a pistol or gun at another person, may
3 be found to have assaulted such person.

4 A dangerous weapon or device includes
5 anything capable of being readily operated,
6 manipulated, wielded or otherwise used
7 by one or more persons to inflict severe
8 bodily harm or injury upon another person.

9 So an operable firearm, such as a pistol,
10 revolver or other gun, capable of firing
11 a bullet or other ammunition may be found
12 to be a dangerous weapon or device.

13 To put in jeopardy the life of a
14 person by the use of a dangerous weapon
15 or device means then to expose such person
16 to the risk of death or to the fear of
17 death by the use of such dangerous weapon
18 or device.

19 The test of whether a victim's life
20 has been placed in danger is an objective
21 one, not whether the employee was put in
22 fear, but whether her life was put in
23 danger by the use of a dangerous weapon.

24 In this connection you may consider
25 testimony indicating that a gun was

1 displayed during the robbery, and although
2 there is no direct, that is, eyewitness
3 evidence that the gun was loaded, evidence
4 that a robber displayed a gun to back up
5 his demands may indicate that he wants
6 the victim to believe that it is operable
7 and loaded. You may infer that the gun
8 was operable and loaded from that evidence,
9 under rules which I will mention later in
10 my instructions concerning direct and
11 circumstantial evidence.

12 There is evidence that Government's
13 Exhibit 7, the gun, which was seized in
14 defendant's room in Dallas, was loaded at
15 that time and that it was operable late
16 in January of 1976. You must decide
17 whether Government's Exhibit 7 was the
18 gun Eileen Batt and Frances Bialek saw in
19 defendant's hand at the bank on October 3,
20 1975, and whether its condition of oper-
21 ability was the same on January 26, 1976
22 as it was on October 3, 1975.

23 There are certain rules of law, some
24 of which I have already mentioned, which
25 are common to all criminal cases, and which

1 you must apply in reviewing the evidence
2 which is before you. A basic rule in
3 all criminal cases is that a defendant,
4 and that includes this defendant, Herbert
5 Davis Gordon, is presumed to be innocent.
6 He is presumed to be innocent at the time
7 the indictment was laid or returned, at
8 the time this trial started, and during
9 all of the evidence and up to this point,
10 and through this point, and will be
11 considered so until, when and if you may
12 return a verdict of guilty. Through all
13 of that time he is presumed to be innocent.

14 Now, the burden of proof that a
15 person is guilty beyond a reasonable doubt
16 rests with the Government at all times,
17 it never shifts to the defendant. In
18 order to sustain the Government's burden,
19 it must present proof which is sufficiently
20 strong to convince each juror of defendant's
21 guilt beyond a reasonable doubt. The
22 requirement that the prosecution prove
23 a defendant's guilt beyond a reasonable
24 doubt extends to every essential element
25 of a crime or crimes charged against this

1 defendant, as I have outlined to you.

2 If you are satisfied from a review of all
3 of the evidence in the case that the
4 evidence as to a particular count
5 establishes guilt beyond a reasonable
6 doubt, you may convict the defendant on
7 that count. On the other hand, if you
8 have a reasonable doubt at any point with
9 respect to a particular count under
10 consideration, you must acquit the
11 defendant on that count. You will, of
12 course, separately weigh and determine
13 the evidence as to each of the three
14 counts in the indictment. You will
15 determine the guilt or innocence of the
16 defendant as to each count of the indict-
17 ment separately.

18 Now, a reasonable doubt is a fair
19 doubt, based upon reason and common sense,
20 and arising from the state of the evidence.
21 Of course, it is rarely possible to prove
22 anything to an absolute certainty. Proof
23 beyond a reasonable doubt therefore is
24 established if the evidence is such as
25 you would be willing to rely and act upon

1 in the most important of your own affairs.
2
3 A defendant, however, is not to be
4 convicted on mere suspicion or conjecture
5 or mere accusation. A reasonable doubt
6 may arise not only from the evidence
7 produced, but also from a lack of evidence.
8
9 Since the burden is upon the Government,
10 that is, the prosecutor, to prove the
11 accused guilty beyond a reasonable doubt
12 of every essential element of the crime
13 charged, a defendant has the right to
14 rely upon the failure of the prosecution
15 to establish such proof. A defendant may
16 also rely upon evidence brought out on
17 cross examination of witnesses who have
18 been produced by the prosecution. The law
19 does not impose upon the defendant the
20 duty of producing any evidence. Remember,
21 however, that a reasonable doubt is such
22 doubt as is based upon reason and as
23 appeals to your power of logic. It is a
24 doubt arising out of something tangible
25 in the evidence in the case or something
 lacking in the case. It is to be distin-
 guished from a doubt which may be based

1 upon some emotion, such as upon a whim
2 or upon fancy. If you feel uncertain and
3 not fully convinced that the defendant **is**
4 guilty of the crimes charged, and you
5 believe you are acting in a reasonable
6 manner, and you believe a reasonable man
7 or woman in any matter of like importance
8 would hesitate to convict because of **such**
9 a doubt as you have, that is a reasonable
10 doubt, to the benefit of which the
11 defendant is entitled. If you have such
12 a doubt, you must acquit. As I have
13 stated before, a reasonable doubt in your
14 mind as to any essential element of the
15 crime entitles the defendant to **acquittal**
16 of that crime and that count involved.

17 However, the rule that the Government
18 must prove every essential element of a
19 crime beyond a reasonable doubt does not
20 mean that you must believe the testimony
21 of every Government witness as being true
22 beyond a reasonable doubt or that every
23 piece of evidence they have offered is
24 true beyond a reasonable doubt. It means
25 only that the credible evidence, as weighed

1 and found by you, under my instructions
2 and as viewed as a whole, must establish
3 every essential element of the crime and
4 the defendant's guilt beyond a reasonable
5 doubt.

6 Now, as the sole judges of the facts,
7 you must determine which of the witnesses
8 you believe, what portion of their testi-
9 mony you accept, and what weight you
10 attach to it. At times during the trial
11 I sustained objections to questions which
12 were asked without permitting the witness
13 to answer or where an answer had been
14 made I may have instructed that you
15 disregard it, that it be stricken from
16 the record. You may not draw any infer-
17 ence from an unanswered question. What
18 the lawyers have said is not evidence,
19 so what is in their question is not
20 evidence, nor may you consider testimony
21 which has been stricken in reaching your
22 decision. The law requires that your
23 decision be made solely upon the competent
24 evidence before you, what you heard from
25 the witnesses on the witness stand, and

1 what is embodied in those pieces of
2 evidence which I have admitted into
3 evidence and which you will have for your
4 consideration. Any item that I have
5 excluded is not legally admissible and
6 is not to be considered by you.

7 A defendant in an American court,
8 such as Herbert Davis Gordon is a
9 defendant in this case in this court, is
10 under no obligation to give any evidence
11 whatsoever. I mentioned that he need not
12 produce any evidence. He need not himself
13 give any evidence. You should not draw
14 any inference from the failure of the
15 defendant in this case to take the stand
16 and testify about the case. A defendant
17 has the right to go to you, the jury, on
18 the contention that the evidence of the
19 prosecution is insufficient to warrant
20 his conviction under the rules of law
21 which I have been outlining to you.

22 There is evidence in the case that
23 the defendant has made outside the
24 courtroom certain statements. Evidence
25 relating to any statement or act claimed

1 to have been made or done by a defendant
2 outside of court, and after a crime has
3 allegedly been committed, should always
4 be considered with caution and weighed
5 with great care, and all such evidence
6 in the case must convince the jury beyond
7 a reasonable doubt that the statement or
8 act was knowingly made or done. In
9 determining whether any statement or act
10 claimed to have been made by a defendant
11 outside of court, and after the crime has
12 allegedly been committed, was knowingly
13 made or done, you should consider the
14 age and the sex and the training, the
15 education, occupation and physical and
16 mental condition of the defendant, as you
17 know it, and his treatment while in
18 custody or under interrogation as that
19 might have been brought to your attention,
20 and also all other circumstances in
21 evidence surrounding the making of a
22 statement or the act or the admission,
23 including whether before the statement
24 or act was made or done the defendant
25 knew or had been told and understood that

he was not obligated or required to make
or do the statement or act claimed to
have been made or done by him, that any
statement or act which he might make or
do could be used against him in court,
that he was entitled to the assistance of
counsel before making any statement,
either oral or in writing, or before
doing any act or omitting to do **any** act,
and that if he was without money or means
to retain counsel of his own choice, an
attorney would be appointed to advise him
and represent him free of cost and
obligation. A statement or act is know-
ingly made or done if it is done volun-
tarily and intentionally, and not because
of mistake or accident or other innocent
reason. If the evidence in the case does
not convince you beyond a reasonable
doubt that a statement was made voluntarily
and intentionally, you should disregard
it entirely. On the other hand, if the
evidence in the case shows beyond a
reasonable doubt that the statement was
in fact voluntarily and intentionally

Now, you, the jury, also are the sole judge of the weight that you are going to assign to the testimony of different witnesses. Some of the evidence in the case may be more believable to you than other evidence. The matter of the credibility of the witnesses you have heard is one of the questions of fact which you must take into consideration in arriving at your verdict, and you are entitled to and should utilize in this connection your observation of the witnesses as they appeared before you on the stand, and your own experience in your respective lives, in deciding whether someone is stating the truth. You may find that one or more witnesses was a better observer, had a more accurate memory or was otherwise more reliable than other witnesses. You may take into consideration in evaluating the testimony the demeanor of the witness on the stand, and the interest

1 or lack of interest which he or she has
2 in the outcome of the litigation. If you
3 find that a witness knowingly testified
4 falsely concerning any material matter,
5 you have a right to discount his or her
6 entire testimony, or you may choose from
7 that testimony that which you believe to
8 be true and reject that which you believe
9 not to be true. A witness knowingly
10 testifies falsely if he or she thus
11 testifies intentionally and not merely
12 because of mistake or other innocent
13 reason.

14 There are two types of evidence from
15 which you may properly find a defendant
16 guilty of the offense or offenses charged
17 in this case. The proof can consist of
18 the testimony of those who witnessed the
19 defendant's conduct and who have testified
20 to that conduct in the course of the trial.
21 This is oftentimes called direct evidence
22 or eyewitness evidence. Although the
23 Government may not be able to produce
24 eyewitnesses to the conduct on which guilt
25 depends, this does not mean that it cannot

1 produce proof sufficient to support a
2 verdict. You are permitted to draw from
3 one fact the existence of another, if
4 reason and experience support the inference,
5 that is to say, you may draw from
6 facts, which you find to have been proven,
7 such reasonable inferences as seem
8 justified by reason and logic in the
9 light of your own experience in life.
10 Basically, an inference is nothing more
11 than a deduction or conclusion which
12 reason and common sense lead you to draw
13 from facts which have been proven. As I
14 have stated before, any inference which
15 is drawn from the evidence must reasonably
16 flow from the evidence, and must be based
17 upon facts established in the evidence.
18 Since a permissible inference in law must
19 flow naturally and logically from and
20 be based upon facts established by the
21 evidence, it follows you may not base
22 further inferences merely on inferences
23 already drawn. You cannot base an inference
24 upon an inference. If in the course
25 of your consideration of all of the

1 evidence as to defendant you find that
2 certain evidence admits equally of two
3 inferences, one supporting innocence and
4 the other supporting guilt, you must
5 accept the inference supporting innocence
6 and reject the inference supporting guilt.

7 In weighing the evidence which has
8 been adduced you can consider the circum-
9 stance, if you find it has been established
10 beyond a reasonable doubt, that the
11 defendant had the exclusive possession of
12 property, which was specified in any
13 count of the indictment, recently after
14 that property was stolen in the robbery
15 which is alleged in the indictment. You
16 are not required to draw any conclusion
17 from that circumstance, but you are
18 permitted to infer from the defendant's
19 unexplained or unsatisfactorily explained
20 possession of recent stolen property that
21 the defendant is guilty of the offense
22 if, in your judgment, such an inference
23 is warranted by the evidence as a whole.
24 The defendant's possession of the recently
25 stolen property does not shift the burden

1 of proof. The burden is always upon the
2 Government to prove beyond a reasonable
3 doubt every essential element of an
4 offense before the defendant may be found
5 guilty of that offense. Before you may
6 draw any inference from the defendant's
7 unexplained or unsatisfactorily explained
8 possession of property stolen in the
9 robbery charged in any count of the
10 indictment, you must first find that the
11 Government has proved beyond a reasonable
12 doubt every essential element of that
13 offense, and as to those elements I have
14 already instructed you. If you should
15 find the Government has proved beyond a
16 reasonable doubt every essential element
17 of that offense, the defendant's unexplained
18 possession of the recently stolen property
19 is a circumstance upon which you may find
20 by the process of inference that the
21 defendant was the person who stole it.
22 In short, if the Government has proved
23 beyond a reasonable doubt every essential
24 element of the offense of robbery charged
25 in this case, then, but only then the

1 defendant's unexplained possession of
2 property stolen in that robbery permits
3 you to infer that the defendant was the
4 robber.

5 The word "recently" as used in these
6 instructions is a relative term and has
7 no fixed meaning. Whether property may
8 be considered as recently stolen depends
9 upon all the facts and circumstances
10 shown by the evidence. The longer the
11 period of time since the theft of the
12 property, the more doubtful becomes the
13 inference which may reasonably be drawn
14 from its unexplained possession.

15 In considering whether the defendant's
16 possession of the recently stolen property
17 has been satisfactorily explained, you
18 must bear in mind that the defendant is
19 not required to take the witness stand
20 himself or to furnish an explanation.
21 His possession may be satisfactorily
22 explained by other circumstances shown
23 in the evidence independently of any
24 testimony by the defendant himself, and
25 even though the defendant's possession

1 of the recently stolen property is
2 unexplained, you cannot draw the inference
3 under consideration if, on the evidence
4 as a whole, you have a reasonable doubt
5 as to his guilt.

6 It is exclusively within your
7 province to determine, (a), whether the
8 property specified in any count of the
9 indictment was stolen in the robbery
10 alleged and, if so, (b), while recently
11 stolen it was in the exclusive possession
12 of the defendant and, if so, (c), whether
13 the possession of the property has been
14 satisfactorily explained and, (d),
15 whether the evidence as a whole warrants
16 any inference therefrom.

17 If you should find the Government
18 has proved beyond a reasonable doubt
19 every essential element of the offense of
20 robbery charged in any count of the indic-
21 ment, and that property was stolen, as
22 alleged, and that while recently stolen
23 it was in the exclusive possession of the
24 defendant, you may draw, but you are not
25 required to draw, from these circumstances

If you should find that the Government has failed to prove beyond a reasonable doubt every essential element of the offense of robbery charged in that count of the indictment, or if you should find that the Government has failed to prove beyond a reasonable doubt that property specified in that count of the indictment was in the exclusive possession of the defendant while recently stolen, or if the defendant's possession of the stolen property is satisfactorily explained by other circumstances shown by the evidence, or if on the evidence as a whole you have a reasonable doubt as to the defendant's guilt, then in any one or all of these events, you must find the

1 defendant not guilty of the offense of
2 robbery charged in such count of the
3 indictment.

4 Identification of this defendant as
5 the person who stood at Eileen Batt's
6 teller's cage on the morning of October
7 3, 1975 is, of course, one of the key
8 elements of the Government's burden of
9 proof in this case. In considering
10 identification testimony, you are to
11 keep in mind that such testimony should
12 be considered with great caution. No
13 class of testimony is more uncertain and
14 less to be relied upon than that as to
15 identity. Identification testimony is
16 an expression of belief or impression by
17 the witness. Its value depends on the
18 opportunity the witness had to observe
19 the offender at the time of the offense
20 and to make a reliable identification
21 later. In appraising the identification
22 testimony of a witness, you should
23 consider the following: First, are you
24 convinced that the witness had the
25 capacity and an adequate opportunity to

1 observe the offender. Whether the witness
2 had an adequate opportunity to observe
3 the offender at the time of the offense
4 will be affected by such matters as how
5 long or short a time was available, how
6 far or close the witness was, how good
7 were lighting conditions, whether the
8 witness had had occasion to see or know
9 the person in the past. Secondly, you
10 must consider the credibility of each
11 identification witness in the same way as
12 any other witness. Consider whether he
13 or she is truthful. Consider whether he
14 or she had the capacity and opportunity
15 to make a reliable observation on the
16 matter covered in his or her testimony.
17 I again emphasize that the burden of
18 proof on the prosecutor extends to every
19 element of the crime charged, and this
20 specifically includes the burden of proving
21 beyond a reasonable doubt the identity of
22 the defendant as the perpetrator of the
23 crime with which he stands charged. If,
24 after examining the testimony, you have
25 a reasonable doubt as to the accuracy of

the identification, you must find the defendant not guilty.

3 Proof of a chain of circumstances
4 pointing to the commission of an offense
5 by an accused is termed circumstantial
6 evidence, and you may, of course, consider
7 and find that both types of evidence,
8 direct and circumstantial, bear upon the
9 question of the innocence or the guilt
10 of the defendant. As a general rule, the
11 law makes no distinction between direct
12 and circumstantial evidence, but simply
13 requires that before convicting a
14 defendant you, the jury, be satisfied of
15 his guilt beyond a reasonable doubt.

16 Now, I stress again that you are to
17 find the facts. Examples or factual
18 indications that I have given do not
19 indicate any opinion on my part as to how
20 you should find on any issue of fact or
21 whether you should find this defendant
22 guilty or whether you should acquit him.
23 These matters are totally for your
24 decision, and I have no part in making
25 that decision, other than giving you the

1 instructions on the law which I have
2 done.

3 Your verdict as to the guilt or
4 innocence of the defendant on each of
5 these three counts must be reached
6 unanimously, with all twelve jurors
7 agreeing on the particular result. I
8 will send a copy of the indictment to
9 the jury room with you for your reference,
10 and this has been marked Court Exhibit A.

11 You should bear in mind that the
12 indictment is not in evidence, and it is
13 not itself evidence, it is merely the
14 device as used in our courts whereby a
15 defendant is advised of the charges which
16 have been placed against him, and you
17 should not consider it as proving or tend-
18 ing to prove anything whatsoever.

19 Now, you may also find a defendant
20 here guilty of an offense, which is
21 necessarily included in the crime charged,
22 if it is consistent with the facts given
23 in the evidence and in the law given in
24 my instructions. This has particular
25 reference to the crime which is charged

1 in count two of the indictment, namely,
2 the violation of Section 2113(b), Title
3 18, and in the elements there you will
4 remember that, as I read them to you,
5 what must be proved is that the amount
6 taken exceeded \$100. Now, the offense,
7 larceny, under that section necessarily
8 includes the lesser offense involving
9 the same acts, with the same intent, but
10 involving money of a value not exceeding
11 \$100. Thus, with respect to that count
12 of the indictment, you have to find
13 separately whether the amount of money
14 involved is over \$100, and if it is not,
15 of course, there would be no violation
16 of that section.

17 When you go into the jury room you
18 will pick one of your number to act as
19 your spokesman or the person who will
20 speak for you when you come back into
21 court and, if for any reason you have to
22 get in touch with me, or if you have any
23 question, you only do that by writing out
24 a note and giving it to the deputy marshal
25 wh. will be down there outside of your

1 deliberation room. You should not
2 question the deputy marshal or anyone
3 about what your duties are. If you have
4 a question, write it out, give it to the
5 deputy marshal, the deputy marshal will
6 bring it to me, and I will give it prompt
7 attention.

8 Now, your verdict, as I said, must
9 be by unanimous vote, and when you have
10 reached a verdict, either of acquittal
11 or of guilt on each of the three counts,
12 you will advise me by a note when you have,
13 and then I will bring you back into the
14 courtroom. You will receive in the jury
15 room all of the exhibits which are in
16 evidence.

17 In connection with the offense of
18 stealing less than \$100, as I mentioned
19 in connection with count two, he, the
20 defendant, of course, is charged with
21 the violation of Section 2113(b) with
22 having taken more than \$100, but it is a
23 further offense, although a lesser offense,
24 of that same section to take money not
25 exceeding \$100 or something of value not

1 exceeding \$100. So you can, if the
2 evidence supports such a determination
3 and verdict, you can find Mr. Gordon
4 guilty of having violated Section 2113(b)
5 and therefore guilty under count two of
6 the indictment of taking less than \$100
7 but, of course, if you do, your report
8 to me in open court would be to that
9 express effect.

10 Now, in the oath that each of you
11 took at the time you were sworn in as
12 members of the jury, you swore that you
13 would well and truly try this issue which
14 is joined between the Government and
15 Mr. Gordon, and a true verdict give
16 according to the evidence, so help you
17 God. I suggest to you that if you follow
18 that oath and try the issues without
19 combining your thinking with any emotion,
20 you will arrive at a true and just verdict.
21 It must be clear to you that once you get
22 into an emotional state and you let bias,
23 sympathy or prejudice interfere with
24 your thinking, you will not arrive at a
25 true and just verdict. As you deliberate,

1 ladies and gentlemen, please be careful
2 to listen to the opinions of your fellow
3 jurors, and ask for an opportunity to
4 express your own view. No one juror
5 holds center stage in the jury room, and
6 no one juror controls or monopolizes the
7 deliberation. After listening to your
8 fellow jurors and if after stating your
9 view you become convinced that your view
10 is wrong, do not hesitate because of
11 stubbornness or pride of opinion to
12 change your view. On the other hand, do
13 not surrender your honest convictions
14 merely because you are outnumbered. Your
15 verdict must be unanimous, it must
16 represent the absolute conviction of
17 each one of you.

18 Gentlemen, is there any exception
19 or further requests or anything you want
20 heard in the absence of the jury?

21 MR. WILLIAMS: I have both categories, your Honor.
22 THE COURT: All right. I will ask you to step
23 down to the end of the hall again, if you
24 will.
25

(Thereupon the jury exited the courtroom at 12:00 noon.)

4 THE COURT: All right.

5 MR. WILLIAMS: Your Honor, I have an exception,
6 at least insofar as it goes, relating to
7 the Court's instructions to the jury with
8 respect to the gun, Government's Exhibit
9 7, namely, the Court told the jury that
10 it must decide whether or not this was
11 the weapon used and whether or not it was
12 capable of being fired. I have no
13 objection as far it goes, except that it
14 is certainly possible that the jury could
15 find that that may not have been the
16 weapon used, but certainly, considering
17 the testimony and looking at the surveil-
18 lance photographs, that some weapon was
19 used. What I am concerned with is if
20 there is no addition to that charge, they
21 are going to be convinced that if they
22 find that is not the gun, that they
23 could not possibly convict him on count
24 one or three. That is combined, sort of
25 an exception and a request. The other

1 two categories, your Honor, the other
2 two are really in the same category.
3 It relates to the Court's charge on
4 possession of recently stolen property,
5 and it relates to the Court's charge on
6 eyewitness identification. In both
7 instances the Court concluded its charge
8 by saying, in the first instance, if the
9 jury has any question as to whether or
10 not the recently stolen property was
11 taken from the bank, it must acquit.
12 Certainly there is plenty of other
13 evidence in the case, including eyewitness
14 identification, that the defendant is the
15 man who robbed the bank. Likewise, with
16 respect to the eyewitness identification,
17 the Court has said if the jury does not
18 believe the eyewitnesses that this is the
19 man that robbed the bank, then likewise
20 it must acquit. Again, certainly there is
21 other evidence, in addition to eyewitness
22 evidence, wherein the jury could reasonably
23 find that the defendant is guilty beyond
24 a reasonable doubt, namely, the surveillance
25 photographs and, secondly, the items that

were recovered in his room, two bills
1 that are bait money, two \$11s that were
2 bait money that were recovered from the
3 clerk at the Y, the bag that was recovered,
4 the demand note that was recovered, the
5 gun that was recovered, all of which were
6 identified. I think the Court's charge
7 in these three respects gives the jury
8 the idea that unless they make that
9 specific finding they are to acquit the
10 defendant.

11 THE COURT: All right. Mr. Rinaldo?

12 MR. RINALDO: Well, the only request I would have
13 of the Court would be that I would ask
14 you to re-emphasize the fact that they
15 must deliberate and reach a verdict on
16 each individual count. I am not sure if
17 in the course of your charge they did not
18 get the impression that they might take
19 an overall approach to it. I would ask
20 the Court to make that a little more
21 specific.

22 THE COURT: All right. I believe as to the
23 recent stolen property that the charge is
24 all right, Mr. Williams, because the
25

8 THE COURT: Counsel have asked that I clarify
9 or re-emphasize certain aspects of the
10 charge. Firstly, although I think I have
11 sufficiently stated it to you, and I
12 think you should understand this from
13 what I have said, there are three counts
14 of the indictment, and each one charges
15 a separate crime. Each one is under a
16 different section of the Statute, as I
17 have enumerated, and each of those crimes
18 carries with it different essential
19 elements, as I have outlined. You must
20 consider each count and crime separately.
21 Now, as I say, I think you have already
22 gotten that idea that I want to emphasize
23 that to you. I talked of the gun and
24 its operability, and the chore that you
25 would have in determining whether

1 Government's Exhibit 7, which was the
2 gun taken from the room in Dallas, was
3 the same gun as Miss Batt and Miss
4 Bialek testified in the bank. You can,
5 of course, while still not being satis-
6 fied or determining that that Government
7 Exhibit 7 is not that same gun, still
8 be satisfied that a different gun was
9 employed by Mr. Gordon, if you find that
10 it was he, at the bank on October 3rd
11 and, of course, if you do find that there
12 was a different gun there, you still can
13 proceed to a conviction if you are
14 satisfied that all the other elements in
15 the crimes have been proved beyond a
16 reasonable doubt.

17 Further, I talked of identification
18 testimony, and I had reference particularly
19 to the identification testimony as it was
20 given by Eileen Batt and Frances Bialek
21 from the stand, who testified of seeing
22 this person in front of the teller's cage
23 and made an identification of the defendant
24 in court. It was with reference to that
25 that I was speaking, but I think I concluded

1 by saying if you had some reasonable
2 doubt about that identification that you
3 should proceed from that point to **acquittal**.
4 There is in the case other evidence from
5 which you might determine, regardless of
6 how you viewed the identification testi-
7 mony, that Mr. Gordon was the robber.
8 In making these comments I have no
9 inference of how you should find, but
10 there are two or more -- well, two or
11 three possible ways of your determining
12 whether or not Mr. Gordon was the man
13 that was in the bank. I did not mean that
14 the eyewitness identification testimony
15 should be the exclusive means of doing
16 that. You must, however, still pay close
17 attention to the identification testimony
18 and the character of that and, of course,
19 when you leave that area of testimony
20 and go into some other aspect or means
21 of identification, you should be even
22 more cautious and more careful. The two
23 means do exist. You still must be
24 satisfied as to every element beyond a
25 reasonable doubt or you must acquit.

1 All right, is that satisfactory, gentle-
2 men?

3 MR. WILLIAMS: Yes, thank you.

4 MR. RINALDO: Yes, your Honor.

5 COURT: All right, swear the marshals.

6

7 (Thereupon two deputy marshals were
8 duly sworn.)

9

10 THE COURT: As I have indicated to you, your
11 first item of business will be to select
12 one of your number to be the person who
13 will speak for you. Secondly, you may
14 want to do some preliminary deliberating.
15 Thirdly, you will want to have some lunch,
16 what time, Mr. Walsh?

17 CLERK: They should make arrangements very
18 shortly.

19 THE COURT: Probably within the half hour we will
20 make arrangements for your lunch, and
21 you will go out and have lunch and come
22 back and resume your deliberations. So
23 now at this time the twelve originally
24 selected will go with the two deputy
25 marshals to the deliberation room, and

the two alternates -- do you have clothing
there?

3 ALTERNATE JUROR NO. 1: Yes.

4 THE COURT: You can go down there with them and
5 the deputies will see, of course, that
6 they immediately get their clothing out
7 and retire from the room. You, as the
8 alternates, of course, unfortunately
9 have served your purpose at this point,
10 you have insured that the jury can be
11 intact and the trial go forward if any-
12 thing would have happened to any of the
13 other jurors nothing has happened, and
14 we have the twelve original jurors who
15 will be deliberating, and all we can do
16 is to thank you for your close attention
17 and time.

19 (Thereupon the jury exited the
20 courtroom at 12:12 p.m.)

1 PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 2:35 P.M.

2

3 (Defendant present, counsel present,
4 jury absent.)

5

6 THE COURT: Let the record reflect that this is
7 United States vs. Herbert Davis Gordon,
8 Criminal 75-234. I have had note from
9 the jury, received by me at 2:03 which
10 says in its entirety, and it is not
11 signed, it says, "Define Section 2113(d)." So I would propose to read to the jury
12 that part which does interpret that
13 section.

14

15 MR. WILLIAMS: I would agree.

16

MR. RINALDO: I am in agreement, your Honor.

17

18 (Jury entered the courtroom at
19 2:38 p.m.)

20

21 THE COURT: Who is the foreperson?

22

JUROR NO. 5: I am, your Honor.

23

THE COURT: I have a note which I received at
24 2:03 p.m., which says, "Define Section
25 2113(d)." I would propose to read to

1 you that portion of my charge that dealt
2 with that section, which is the section
3 that relates to count three of the
4 indictment. I won't read that count.
5 The pertinent part of the section is as
6 follows:

"Whoever in committing or attempting
to commit any offense defined in Subsec-
tion (a) -- you will recognize Subsection
(a) as being the subsection that is
involved in count one of the indictment
assaults any person -- one facet of it --
or puts in jeopardy the life of any
person by the use of a dangerous weapon
or device -- that is the other facet --
shall be guilty of an offense under the
laws of the United States."

18 I told you that the Government must
19 prove four essential elements in order
20 for you to convict for that offense under
21 that section. The first was the act or
22 acts of taking from the person or presence
23 of another money belonging to or in the
24 care, custody, control, management and
25 possession of a savings and loan association

whose deposits are insured by the Federal
2 Savings & Loan Insurance Corporation.
3 Second, the act or acts of taking such
4 money by force or violence or by means of
5 intimidation. That is the reference
6 back to the manner of taking in Subsec-
7 tion (a), which is what you have been
8 dealing with in count one. Third, the
9 act or acts of assaulting or of putting
10 in jeopardy the life of any person by the
11 use of a dangerous weapon or device while
12 engaged in stealing such money from the
13 savings & loan association and, fourth,
14 doing such act or acts willfully.

15 Now, beyond that, I had gone into
16 the definitions of assault, I had gone
17 into the aspect of putting in jeopardy
18 the life of a person, and I wonder, Mr.
19 Jones, whether it is any of that that the
20 jury would like to hear?

21 JUROR NO. 5: The second part, your Honor.

22 THE COURT: You want to hear the part that deals
23 with putting in jeopardy the life of a
24 person?

25 JUROR NO. 5: Yes, sir.

1 THE COURT:

All right. I think just for completeness, because the first part of it is very brief, and there are two facets or alternate facets, I will read first the assault aspect, which is a short provision, then the putting in jeopardy, which is a longer provision.

If you should find beyond a reasonable doubt from the evidence in the case that the accused did willfully commit robbery of the savings and loan association, as charged, then you must proceed to determine whether the evidence in the case establishes that the accused in committing the robbery assaulted or put in jeopardy the life of Eileen Batt, as charged in the indictment. Any willful attempt or threat to inflict injury on the person of another when coupled with an apparent present ability to do so or any intentional display of force, such as would give the victim reason to fear or expect immediate bodily harm constitutes an assault. An assault may be committed without actually touching or striking or

1 doing bodily harm to the person of
2 another. So a person who has the apparent
3 present ability to inflict bodily harm
4 or injury upon another person, and will-
5 fully attempts or even threatens to
6 inflict such bodily harm, as by inten-
7 tionally flourishing or pointing a pistol
8 or gun at another person, may be found
9 to have assaulted such person. That is
10 the aspect that deals with assault. The
11 other facet of 2113(a), the putting in
12 jeopardy, a dangerous weapon or device
13 includes anything capable of being readily
14 operated, manipulated, wielded or other-
15 wise used by one or more persons to
16 inflict severe bodily harm or injury upon
17 another person. So an operable firearm,
18 such as a pistol, revolver or other gun,
19 capable of firing a bullet or other
20 ammunition m / be found to be a dangerous
21 weapon or device.

22 To put in jeopardy the life of a
23 person by the use of a dangerous weapon
24 or device means then to expose such person
25 to a risk of death or to the fear of

1 death by the use of such dangerous
2 weapon or device. The test of whether
3 a victim's life has been placed in danger
4 is an objective one, not whether the
5 employee was put in fear but whether her
6 life was put in danger by the use of
7 a dangerous weapon. In this connection
8 you may consider testimony indicating
9 that a gun was displayed during the
10 robbery of the First Federal Savings &
11 Loan Association. Although there is no
12 direct eyewitness testimony that the gun
13 was loaded, evidence that a robber dis-
14 played a gun to back up his demands may
15 indicate that he wants the victim to
16 believe that it is operable and loaded,
17 and you may infer that the gun was
18 operable and loaded from that evidence
19 under rules which I will mention later in
20 my instructions to you concerning direct
21 and circumstantial evidence.

22 I said there is evidence that Govern-
23 ment's Exhibit 7, which was the gun
24 seized in the defendant's room in Dallas,
25 was loaded and that it was operable late

1 in January of 1976. You must decide
2 whether Government's Exhibit 7 was the
3 gun Eileen Batt and Frances Bialek saw
4 in the defendant's hand at the bank on
5 October 3, 1975, and whether its condition
6 of operability was the same on January
7 26, 1976 as it was on October 3, 1975.

8 Then I clarified and expanded on
9 that by indicating that even though you
10 might determine -- or might not be able
11 to determine beyond a reasonable doubt
12 that the gun that was picked up in the
13 Dallas YMCA room was the same weapon that
14 the person in front of Eileen Batt had
15 in his hand on October 3, 1975, you still,
16 if you were satisfied that a person did
17 have a gun in his hand at that time, and
18 was threatening -- using it in a threaten-
19 ing way with Eileen Batt, that you could
20 therefrom infer reliably that that gun
21 also was operable and loaded.

22 I think that is the totality, Mr.
23 Jones. Is there anything more?

24 JUROR NO. 5:

25 I think that is sufficient, your
 Honor.

1 Buffalo, N.Y.

ELFVIN, J.

March 15, 1976

2 Cr. 75-234

HERBERT DAVIS GORDON

3

4 APPEARANCES:

RICHARD J. ARCARA, ESQ.,
United States Attorney, by
KENNETH A. COHEN, ESQ.,
Ass't. United States Attorney,
Appearing on behalf of the Government.

5 FILED

6 MAR 16 1976

7O'C.....M.
8 K. ADAMS, Clerk

THOMAS N. RINALDO, ESQ.,
Appearing on behalf of the Defendant.

9 CLERK:

10 Criminal 75-234, United States versus

11 Herbert Davis Gordon.

12 THE COURT:

13 Mr. Gordon, you are here with your
14 attorney today following a trial before a
15 jury and a conviction by that jury of three
16 counts of an indictment charging you with
17 various aspects of bank robbery, this being
18 2113(a), (b) and (d) of Title 21. Now, Mr.
19 Rinaldo, have you anything to say on behalf
20 of Mr. Gordon at this time?

21

22

23

24

25

MR. RINALDO: At this time, your Honor, I would like
to point out to the Court --

THE COURT:

Incidentally, you have examined and
read the presentence report?

MR. RINALDO:

I have, your Honor. I read it this
morning, and I had occasion to see Mr.
Gordon prior to coming to court. If your

1 Honor please, at this time I would like to
2 point out that Mr. Gordon is presently forty-
3 seven years of age, that for the better part
4 of his life he spent it incarcerated in
5 prison. From the period of 1952 to 1973
6 he spent some nineteen years in jail. I
7 think the situation with Mr. Gordon's family
8 background, his environment, his physical
9 and mental condition, have been factors
10 which have led to this life of crime. I
11 think the proper definition of Mr. Gordon
12 is stated in the probation report, that Mr.
13 Gordon is in fact mentally confused. He
14 is obviously obsessed with the fact that the
15 whole world seems to be against him, including
16 the system, the court system, myself, you,
17 the United States Attorney's office, and so
18 on, and so forth. I think this lack of
19 stability in Mr. Gordon's life has led to this
20 period of crime. He has elected, after being
21 out of jail for some years, to commit a
22 bank robbery. Although I think incarceration
23 appears to be imminent in this case, I would
24 ask the Court to take into consideration Mr.
25 Gordon's physical and mental condition, to

1 impose a sentence, whatever in the Court's
2 mind, considering all the facts and circum-
3 stances of this case, seems fair and just,
4 taking into consideration Mr. Gordon's
5 entire background, his history, his ability
6 to adjust to his environment, his ability to
7 exist in jail -- it was pointed out that
8 whenever he has been incarcerated for a long
9 period of time he wound up a patient in the
10 state hospital -- I only ask the Court to
11 consider all this and impose whatever minimum
12 sentence it can in this particular case.

13 THE COURT: Mr. Gordon, is there anything that you
14 want to say on your own behalf?

15 DEFENDANT: Yes, I would like to, sir. Number
16 one, to file a motion in arrest of judgment;
17 number two, the Court failing to allow me to
18 testify on my own behalf. Your Honor, I am
19 now bringing to the Court's attention that
20 during the course of this trial I was not
21 informed by court assigned counsel that you,
22 your Honor, prevented me from taking the stand
23 and testifying in my own behalf. I have
24 since learned that violated my right to
25 testify on my own behalf. I fear, because

1 of this, that I was not given a fair trial,
2 as provided by your people, the United States
3 Constitution. I further feel that there
4 should be a hearing on this matter here and
5 now. That is all, sir.

6 THE COURT: All right. Now, I think the record
7 would speak for itself, Mr. Gordon, as far
8 as your opportunity to have taken the stand
9 in your own behalf. I am sure your counsel
10 told you, I know that your counsel mentioned
11 this in your presence when he talked to
12 the jury originally, and I know further
13 that it was part of my charge to the jury
14 that they were not to at all detriment your
15 situation because of your not having taken
16 the stand, that there was no duty on your
17 part to do it, that the Government had the full
18 obligation to prove its case against you and,
19 consequently, I at this time assign no
20 weight whatsoever to this position you are
21 taking about being deprived by me or anyone
22 else of your right to take the stand on your
23 own behalf. Now, the motion in arrest of
24 judgment is denied, and if you have nothing
25 further to say on your behalf, I am going to

1 impose judgment. The judgment of this
2 Court on these three convictions is that you
3 be committed to the custody of the Attorney
4 General of the United States for a period of
5 eighteen years.

6 MR. RINALDO: Thank you, your Honor.

7 CLERK: You must notify him of the ten days to
8 appeal.

9 THE COURT: Mr. Rinaldo, you will see that within
10 ten days there is a notice of appeal filed?

11 MR. RINALDO: That is correct.

12 * * * * *

13 MR. COHEN: Your Honor, with respect to Criminal
14 75-234, the matter of Gordon, could you clarify
15 that sentence for our office, please? Was
16 the eighteen years incarceration imposed
17 under violation of Section (d) of the bank
18 robbery --

19 THE COURT: All three. The maximum would be
20 eighteen years, that is right. Of course,
21 there is a certain amount of confusion that
22 arises out of sentencing under 2113(a), (b)
23 and (d) which I have tried to resolve in
24 my own mind, and it seems to me that this is

1 the best manner of doing it. You are as
2 conversant as I with the cases that have
3 fallen into this area, and they seem to
4 prohibit me from saying you will have X
5 years on (a), X years on (b), and X years
6 on (d), all running concurrent. They seem
7 not to prohibit handling it this way, and it
8 seems to me to be the best way to protect
9 the whole situation. So sentence is on the
10 three convictions, eighteen years.

11

12 * * * * *

13

14

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I hereby certify that this record is a true and accurate transcript of the stenographic notes in the above case.

Henry T. Hale
Official Reporter
U.S. District Court

INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place Dallas, Texas
 Date 10/6/75
 Time 3:33 PM

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

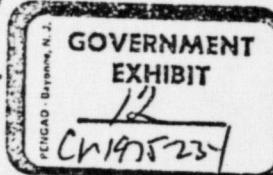
I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed _____

Witness: N. Lamar Meyer

Witness: Herbert David Gordon, FBI Dallas

Time: 3:33 PM



Herbert David Gordon read above, said he understood his rights but refused to sign.

Herbert David Gordon

N. Lamar Meyer

4:05 P.M. Correct name - pm

10/6/75
(Date)

Dallas, Texas
(Location)

I, Herbelt David Gordon, having been informed of my constitutional right not to have a search made of the premises hereinafter mentioned without a search warrant and of my right to refuse to consent to such a search, hereby authorize H. Linnik Meyer, W. Sedson Hanes, and _____, Special Agents of the Federal Bureau of Investigation, United States Department of Justice, to conduct a complete search of my premises located at

Room 721, Downtown YMCA, 605 N. Akard St., Dallas, Tex.

These agents are authorized by me to take from my premises any letters, papers, materials or other property which they may desire.

This written permission is being given by me to the above-named Special Agents voluntarily and without threats or promises of any kind.

(SIGNED) Herbelt Gordon



WITNESSES:

W. Sedson Hanes, FBI-Dallas
H. Linnik Meyer, FBI, Dallas, Texas.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

HERBERT DAVIS GORDON,

Defendant

NOTICE OF MOTION

CR. NO. 1975-234

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of THOMAS N. RINALDO, ESQ., duly sworn to on the 8th day of December, 1975, and upon Indictment No. Cr-1975-234, found herein against the defendant, HERBERT DAVIS GORDON, and upon all of the papers and proceedings heretofore had herein in connection with this matter, a Motion will be made at a Term of this Court in the United States Courthouse at Buffalo, New York, on the 15th day of December, 1975, at 2:00 in the ~~afternoon~~^{after} 2:15 of that day, or as soon thereafter as counsel can be heard for an Order pursuant to 18 U.S.C. Section 4244 and pursuant to Rule 12.2 (a) and (b) of the Federal Rules of Criminal Procedure requesting that the Court appoint a qualified psychiatrist to examine the defendant and report to the Court whether or not the said defendant is "presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against

SCINTA, RINALDO
& SANDLER
Attorneys at Law
622 Brisbane Bldg.
Buffalo, N.Y. 14203

C

him or properly assist in his own defense" and/or whether the defendant did suffer from such mental defect, disease or other condition bearing upon the issue of whether or not he had the mental state required for the commission of the crimes charged in the indictment.

TO: RICHARD J. ARCARA
U.S. Attorney
Western District of N.Y.
502 U.S. Courthouse
Buffalo, N.Y. 14202

ROGER WILLIAMS, ESQ.
Assistant U.S. Attorney

Yours, etc.
SCINTA, RINALDO & SANDLER
Attorneys for Defendant
622 Brisbane Bldg.
Buffalo, N.Y. 14203
THOMAS N. RINALDO, of Counsel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

HERBERT DAVIS GORDON,

Defendant

AFFIDAVIT

CR. NO. 1975-234

STATE - W YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

THOMAS N. RINALDO, being duly sworn, deposes and says:

1. That your deponent is an attorney at law duly licensed to practice his profession in all of the Courts of the State of New York, and is a partner in the law firm of SCINTA, RINALDO & SANDLER.

2. That your deponent has been assigned to represent the defendant, HERBERT DAVIS GORDON, in connection with the proceedings against him under Criminal Indictment No. CR. NO.-75-234 wherein the defendant is charged with various violations of the bank robbery statutes.

3. That on November 17, 1975, your deponent did appear at this defendant's arraignment and entered a plea of not guilty on his behalf and requested additional time to file motions on behalf of the defendant herein.

4. Your deponent did file motions and motions were heard and argued on the 2nd day of December, 1975, by the United

States Magistrate for the Western District of New York and at that time your deponent was advised to file additional motions respecting the question of the defendant's insanity or mental incompetency to proceed at trial. Further, at the time of the defendant's arraignment, your deponent was provided with various letters which it is his understanding were written by the defendant while the defendant was in Texas awaiting removal to this jurisdiction for the present proceedings.

5. Your deponent has reviewed the said letters and attached are copies of same hereto for the Court's review and consideration in connection with this instant application.

6. Further, your deponent has been informed that the defendant wrote a letter to Judge Elfvin, Federal Court Judge for the Western District of New York, requesting in the said letter that your deponent be removed as counsel in connection with these proceedings.

7. On December 5, 1975, your deponent did visit the defendant at the Erie County Holding Center and as a result of the conversations with your deponent, further and additionally feels, that it is necessary that this defendant be examined to determine whether or not he understands the charges against him, and whether or not he was at the time of the alleged occurrence or at the present time, insane.

8. Your deponent at this time does not feel he is at

liberty to discuss the details of the conversations had with the defendant at the jail, however, submits to the Court that they are such in nature that they indicate to your deponent a possible insane or incompetent person such as to render these proceedings very prejudicial to him if they were to proceed under his present state of mind.

9. Your deponent, if the Court wishes at the time of the argument of this implication, will request of the defendant in open Court permission to discuss the details of this jail conference, however, absent the expressed permission from his client will be unable to do so, either in this affidavit or at the time of the Court proceedings in connection with this instant application.

10. Further, your deponent submits that he has had conversations with Roger Williams, the U.S. Attorney assigned to prosecute this case and both he and Mr. Williams have agreed that Dr. Michael Lynch, be appointed to examine the defendant herein, and accordingly, your deponent makes that request of the Court.

WHEREFORE, your deponent respectfully requests that the Court order the defendant examined pursuant to 18 U.S.C. Section 4244 and appoint Dr. Michael Lynch to conduct the said examination and report to the Court as soon as possible.

CINTA, RINALDO
& SANDLER
Attorneys at Law
622 Brisbane Bldg.
Buffalo, N.Y. 14203

THOMAS N. RINALDO

Sworn to before me this

day of December, 1975.

Notary Public: Erie Co., N.Y. My Comm. expires: 3/30/7

DALLAS, TEXAS

NOV 5 1975 Hutch. TUESDAY
AM PM 11-4-75 HERBERT D. GORDON
7,8,9,10,11,12,8,9,10
DALLAS COUNTY JAIL
500-COMMERCE STREET,
DALLAS, TEXAS,
75202

TO, U.S. ATTORNEY

MR. FRANK MCCOWAN

DEAR SIR,

I AM WRITING THIS LETTER PERTAINING
TO A VERY SERIOUS MATTER, WHICH I WOULD
LIKE VERY MUCH OF THE UNITED STATES
GOVERNMENT TO DO FOR ME IN MY BEHALF.
I HAVE WRITTEN A LETTER YESTERDAY TO,
PRESIDENT FORD, ON THIS MATTER, HE
KNOWS OF ME, HE HAS HELPED ME A FEW
TIMES TO GET ON MY FEET, HE KNOWS OF ME
VERY WELL FROM, BUFFALO, NEW YORK, MR.
MCCOWAN, MY ATTORNEY, MR. WILLIAM F.
COLLINS, CAME TO VISIT ME LAST FRIDAY,
AND HE DISCUSSED MY CASE WITH ME, HE
EXPLAINED TO ME IF I WANTED THIS CASE OF
MINE DISPOSED OF I WOULD HAVE TO GO BACK
TO BUFFALO, N.Y. WHICH I DO NOT WANT
ANYMORE & NEW YORK STATE RESTORE MY
LIFE OR THESE JAILS OR PRISONS,

AFTER THE ATTICA RIOT WHERE I WAS
RELEASED FROM TWO YEARS AGO, MR. MCCOWAN
I WISH TO HAVE THIS CASE OF MINE DISPOSED
OF IN ANOTHER MATTER, WHICH WAS MY
REASONS FOR HOLDING UP THAT BANK
IN BUFFALO, BUT I HAD NO WAY OF
KNOWING THERE WOULD ANY MONEY
WORTH WHILE, MR. MCCOWAN, I HAD
A DREAM EVERY SINCE MY CHILDHOOD,
AND EVERY SINCE THE DAY, WHEN
I ABOUT 3 YRS OLD, I SAW MY MOTHER
BRUTALLY THROWN TO THE FLOOR BY
WHITE MEN, BEATING UP AND RAPED,
THAT BEEN A NIGHTMARE TO ME EVER
SINCE MY CHILDHOOD, THAT'S WHAT STATED
ME LASTINGLY AT YOUR PEOPLE
SOCIETY AND LAW, I EXPLAINED THIS
TO PRESIDENT FORD, SIR, I WISH TO HAVE
MY CASE DISPOSED OF IN THIS MATTER ...

UNDER THESE CONDITIONS, NEVER
TO SET FOOT IN COUNTRY AGAIN, MR.
MURKOWSKI, I WISH TO RESUME
MY CITIZENSHIP, THERE NOTHING FOR
ME HERE, BUT HUMAN MISERY,
I AM A UNDESIRABLE BLACK, WHO
NEVER COULD BEND TO THE POLICIES
OF YOUR GOVERNMENT, NOT AFTER WHAT
HAPPENED TO MY MOTHER, THE GOVERNMENT
COULD PAY MY EXPENSE TO WHERE I
WISH TO GO, I WISH TO GO TO, SUDAN
WHERE I WOULD GLADLY BE ACCEPTED, SIR
IT WOULD BE A LOT CHEAPER LOCKING ME UP
ON THE TAXPAYER'S MONEY, AND COME OUT
IN SOCIETY GOING ON WELFARE, ON THE
TAXPAYER'S MONEY, IT'S SIMPLE LOGIC
SIR IF YOU AND THE COURT AND
GOVERNMENT AND PRESIDENT FORD, WOULD
GRANT ME THIS, IT WOULD BE BEST ALL CONCERN
SINCERELY YOURS GUY BRUNN

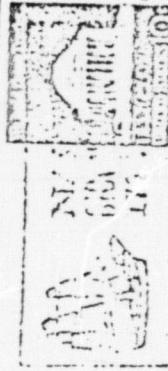
RETURN IN FIVE DAYS TO

HERBERT DENNIS GORDON
12-S-10

508 AMERICAN COUNTY BUILDING

DALLAS, TEXAS, 75202

ZIP CODE



U.S. ATTORNEY

MR. FRANK MCCOWAN,
FEDERAL COURT BUILDING
100 COMMERCE STREET

DALLAS, TEXAS, 75201

TUESDAY

11-4-75

HENRY T. D. GOLDING
12-5-75
DALLAS COUNTY JAIL
500 COMMERCE STREET
DALLAS, TEXAS 75202

To, Hon. JUDGE
BAILY RANKIN

DEAR SIR, I WRITTEN A LETTER
YESTERDAY TO, PRESIDENT FORD, WHO
KNOWS OF ME VERY WELL FROM, BUFFALO
NEW YORK, HE KNOWS OF ME THROUGH
MY LETTERS I HAVE WRITTEN TO HIM
ASKING FOR HIS ASSISTANT, WHICH HE HAS
GIVEN ME, I WRITTEN TO HIM ON A VERY
SERIOUS MATTER, WHICH IS THE VERT
REASON WHY I WRITING YOU THIS LETTER
SIR, TO ASK OF YOUR COURT AND THIS
GOVERNMENT, TO GRANT THIS REQUEST
MY ATTORNEY, MR. WILLIAM E. COLLINS TOLD
ME HE THINK IT COULDNT BE DONE
BUT I KNOW OTHERWISE, SIR, I WISH
TO HAVE THIS CASE DISPOSE OF IN YOUR
YOUR COURT AND BY THE, UNITED STATES
GOVERNMENT IN THIS MANNER, SIR

I WISH TO LEAVE THIS COUNTRY FOR
GOOD, BY REQUISING MY CITIZENSHIP
UNDER THE CONDITIONS TO SET FOOT
IN IT AGAIN, SIR, THIS HAS BEEN A DREAM
AND AAMBITION TO ME VERY SINCE
THAT HORRIBLE DAY WHEN I WAS
A CHILD, AND SAW MY MOTHER
THROWN TO THE FLOOR, AND BEATING UP
AND RAPED BY WHITE MEN, THIS HAS
BEEN A LIVING NIGHTMARE TO ME VERY
SINCE, THIS WHAT STARTED ME LASHING
OUT AT YOUR PEOPLE SOCIETY AND
GOVERNMENT AND GIVING A LIFE
OF CRIME, SIR, THIS IS NO GOOD
FOR ME, I NEVER COULD ALONG WITH
YOUR GOVERNMENT POLICES, NOT WHAT
AFTER HAPPEN TO MY MOTHER WHEN I
WAS A CHILD, SIR, IT WOULD BE BETTER
FOR ALL CONCERN, IF THE GOVERNMENT

GOT ME OUT OF THIS COUNTRY AS
SOON AS IT COULD BE ARRANGED.
THE U.S. GOVERNMENT COULD PAY
THE EXPENSE TO GET RID OF ME,
IT WOULD BE A LOT CHEAPER THAN
PAYING TAXES TO LOOK AFTER THEM
COME OUT IN YOUR SOCIETY, GETTING
ON WELFARE ON THE TAXPAYER'S MONEY
THAN GOING OUT AGAIN AND
COMMITTED MORE CRIME AGAINST
YOUR PEOPLE SOCIETY AND LAWS
JUDGE, IT WOULD BE BEST FOR EVERY
ONE CONCERN, THERE'S NOTHING
HERE FOR ME IN THIS COUNTRY
BUT HUMAN MISERY, SIR, PLEASE
FINE AWAY FOR YOUR COUNT AND
U.S. ATTORNEY, AND, PRESIDENT
FORD AND YOUR GOVERNMENT TO
ME THIS. SINCERELY, yours -
Robert David Brown

SIR, I HAVE TO USE NEWSPAPER
EVERY MORNING TO DRY MY
SELF OFF AFTER I TAKE A SHOWER
IN THIS JAIL. I AM TREATED
LIKE FILTH, THE GOVERNMENT
PAY THESE PEOPLE TO SEE THAT THEY
PROPERLY CARE FOR, ALSO IT'S
NO BIG DEAL ABOUT ME HERE HAVING
ANY DONE FOR ME AND HAVING TO
PAY 40 CENT FOR A HAIR CUT
PAGES

RETURN IN FIVE DAYS TO

H. ROBERT DAVIS, Gordan,
1/2-5-10
500 COMMERCE STREET
DALLAS COUNTY, TEXAS,
TEXAS, 75202

ZIP CODE



HON. JUDGE, BAILY RANKIN
FEDERAL COURT BUILDING
1100 COMMERCE STREET
DALLAS, TEXAS, 75201

UNITED STATES OF AMERICA

vs.

HERBERT DAVIS GORDON

AFFIDAVIT OF SERVICE

APPEAL - No. 76-1138

I, THOMAS N. RINALDO, on May 11, 1976 served two copies of the Brief and Appendix on Appeal in this matter personally on ROGER WILLIAMS, ESQ., Assistant District Attorney, for the Western District of New York and he acknowledged receipt of same in my presence.

Thomas N. Rinaldo

Sworn to before me this

11th day of May, 1976

Robert DeGennaro
Notary Public : Erie County
My Commission Expires: 3/30/77